

# ASSEMBLY, No. 2027

## STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Assemblyman JERRY GREEN**

**District 22 (Middlesex, Somerset and Union)**

**Assemblyman TIM EUSTACE**

**District 38 (Bergen and Passaic)**

**SYNOPSIS**

Concerns membership and management of homeowners associations.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 3/15/2016)**

1 AN ACT concerning the administration and management of planned  
2 real estate developments, and amending and supplementing  
3 P.L.1993, c.30.

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

7  
8 1. Section 1 of P.L.1993, c.30 (C.45:22A-43) is amended to  
9 read as follows:

10 1. a. For the purposes of P.L.1993, c.30 (C.45:22A-43 et seq.)  
11 and P.L. , c. (C. ) (pending before the Legislature as this  
12 bill), the term “owner” and “unit owner” shall mean the owner of  
13 any lot, parcel, unit or interest, in a planned real estate development  
14 that is, or is intended to be, a separately-owned area thereof.

15 b. A developer subject to the registration requirements of  
16 section 6 of P.L.1977, c.419 (C.45:22A-26), or the entity charged  
17 with the management of a planned real estate development as that  
18 term is defined pursuant to section 3 of P.L.1977, c.419 (C.45:22A-  
19 23), regardless of the date of formation of the association or  
20 whether the developer thereof was subject to the registration  
21 requirements, shall organize or cause to be organized an association  
22 whose obligation it shall be to manage the common elements and  
23 facilities. The association, if not formed prior to the effective date  
24 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
25 shall be formed on or before the filing of the master deed or  
26 declaration of covenants and restrictions, and may be formed as a  
27 for-profit or nonprofit corporation, unincorporated association, or  
28 any other form permitted by law. If the planned real estate  
29 development will not be or is not formed as a condominium or a  
30 cooperative, the title to the common elements and facilities may be,  
31 but are not required to be, placed in the name of the association,  
32 provided that the association's governing documents comport  
33 specifically with the provisions of subsection b. of this section, and  
34 with all other provisions of P.L. , c. (C. ) (pending before  
35 the Legislature as this bill), and P.L.1977, c.419 (C.45:22A-21 et  
36 seq.) and P.L.1993, c.30 (C.45:22A-43 et seq.). The fact that the  
37 common elements and facilities of a planned real estate  
38 development may be titled in the name of the association shall not  
39 be construed as diminishing the ownership interests of the unit  
40 owners in those common or shared elements and facilities.

41 c. Membership in the association at all times shall be  
42 comprised solely of all of the owners of dwelling units or homes in  
43 the planned real estate development, and shall include the developer  
44 if there are any unsold units or homes in the development, and the

**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 declaration shall state clearly words to the effect that every owner  
2 of a unit or lot subject to the declaration shall be a member of the  
3 association.

4 If not stated otherwise in the declaration, the ownership interests  
5 of an individual unit owner in the common elements or facilities  
6 shall be deemed to be in the same proportion as the portion of the  
7 common property maintenance expenses attributed to that unit  
8 owner, provided that the total of all common property interests shall  
9 not be greater than 100%, or one, if determined on a fractional  
10 basis. Any governing documents of an association not in  
11 compliance with this section, as amended by P.L. , c. (C. )  
12 (pending before the Legislature as this bill), shall be deemed  
13 amended to be in compliance.

14 d. The provisions of P.L.1993, c.30 (C.45:22A-43 et seq.) and  
15 P.L. , c. (C. ) (pending before the Legislature as this bill)  
16 shall apply to all associations formed to manage the common  
17 property of planned real estate developments, and shall be  
18 construed broadly to supplement the "Condominium Act,"  
19 P.L.1969, c.257 (C.46:8B-1 et seq.), and shall control over that act  
20 whenever the provisions of that act require less accountability to  
21 owners or less transparency in the actions of associations than  
22 required under P.L.1993, c.30 (C.45:22A-43 et seq.) and P.L. ,  
23 c. (C. ) (pending before the Legislature as this bill).

24 e. The Legislature declares that the provisions of P.L.1993,  
25 c.30 (C.45:22A-43 et seq.) and P.L. , c. (C. ) (pending before  
26 the Legislature as this bill) shall be construed as the enabling act for  
27 the formation and operation of associations created to manage the  
28 common elements and facilities of planned real estate  
29 developments, notwithstanding the fact that condominiums shall  
30 also be subject to the provisions of the "Condominium Act,"  
31 P.L.1969, c.457 (C.46:8B-1 et seq.).  
32 (cf: P.L.1993, c.30, s.1)  
33

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

36 3. a. (1) The form of administration of an association  
37 organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43)  
38 shall provide for the election of an executive board **[,]** or governing  
39 board, elected by and responsible to the members of the association  
40 pursuant to section 4 of P.L.1993, c.30 (C.45:22A-46), which board  
41 shall be comprised of at least three members and through which the  
42 powers of the association shall be exercised and its functions  
43 performed.

44 (2) Any power granted to, or restriction placed on, a  
45 condominium association or developer pursuant to the  
46 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.) shall be  
47 inferred as equally applicable to a homeowners' association as  
48 defined in section 1 of P.L.1993, c.30 (C.45:22A-43), or developer

1 thereof, regardless of the lack of specific provisions in P.L.1993,  
2 c.30 (C.45:22A-43 et seq.) based on the intent of the Legislature  
3 that all types of planned real estate development associations should  
4 have uniform powers, standards of operations, and protections for  
5 the property interests of homeowners. This shall include, but not be  
6 limited to, the power of an association to adopt, amend, and enforce  
7 reasonable administrative rules and regulations, including the  
8 imposition of fines and late fees which may be enforced as a lien if  
9 such powers are contained in the bylaws, and incorporating by  
10 reference the authority of sections 14, 15, and 21 of P.L.1969, c.257  
11 (C.46:8B-14, C.46:8B-15, and C.46:8B-21) to a homeowners'  
12 association, relating to the operation, use, and maintenance of the  
13 common elements, including limited common elements. The  
14 Legislature declares that the rights of owners living in these  
15 communities to transparency and fairness in actions from their  
16 respective associations, and their elected governing boards, is  
17 granted through the provisions of P.L.1993, c.30 (C.45:22A-43 et  
18 seq.) and P.L. , c. (C. ) (pending before the Legislature as  
19 this bill), and shall not be distinguished or diminished on the basis  
20 of the type of planned real estate development that has been formed  
21 by the developer.

22 b. Subject to the master deed, declaration of covenants and  
23 restrictions, bylaws or other instruments of creation, **【**subsection d.  
24 of this section**】** the provisions of P.L.1993, c.30 (C.45:22A-43 et  
25 seq.), the provisions of P.L. , c. (C. ) (pending before the  
26 Legislature as this bill), and the laws of the State, the executive  
27 board may act in all instances on behalf of the association.

28 c. The members of the executive board appointed by the  
29 developer shall be liable as fiduciaries to the owners for their acts  
30 or omissions. The members of the executive or governing board  
31 elected by the members of the association shall be liable as  
32 fiduciaries to the owners for their acts or omissions.

33 d. (1) During control of the executive board by the developer,  
34 copies of the annual audit of association funds shall be available for  
35 inspection by owners or their authorized representative at the  
36 project site.

37 (2) An owner shall be entitled to inspect the business and  
38 financial records of the association upon written request at  
39 reasonable times and a reasonable location, if not on-site.  
40 “Business records” means and includes notices, agendas and  
41 minutes of meetings, governing documents, including copies of the  
42 declaration and bylaws, and governmental orders. “Financial  
43 records” means and includes a record of all receipts and  
44 expenditures, invoices, cancelled checks, and an account for each  
45 unit setting forth any shares of common expenses or other charges  
46 due, the due dates thereof, the present balance due, and any interest  
47 in common surplus. The financial records of the association shall  
48 be kept in accordance with generally accepted accounting

1 principles. Business and financial records of the association, which  
2 shall be kept separately from the developer's business and financial  
3 records, shall be deemed presumptively non-confidential for the  
4 purposes of disclosure to members of the association; the executive  
5 board of the association, however, shall redact any clearly personal  
6 identifying information contained in association business or  
7 financial records, such as social security numbers, or personal  
8 addresses, in order to facilitate disclosure to requesting members of  
9 the association. The provisions of this paragraph shall be deemed  
10 applicable to condominiums, notwithstanding the language of  
11 subsection (k) of section 14 of P.L.1969, c.257 (C.46:8B-14), and  
12 shall be construed broadly for the purpose of providing  
13 transparency in the management of common property and facilities,  
14 and the assessment of common expenses.

15 (cf: P.L.1993, c.30, s.3)

16

17 3. Section 4 of P.L. 1993, c.30 (45:22A-46) is amended to read  
18 as follows:

19 4. The bylaws of the association, which shall initially be  
20 recorded with the master deed shall include, in addition to any other  
21 lawful provisions, the following:

22 a. A requirement that all meetings of the executive board,  
23 **【except conference or working sessions at which no binding votes**  
24 **are to be taken,】** shall be open to attendance by all unit owners, and  
25 adequate notice of any such meeting shall be given to all unit  
26 owners in such manner as the bylaws shall prescribe; except that the  
27 executive board may exclude or restrict attendance at those  
28 meetings, or portions of meetings, dealing with (1) any matter the  
29 disclosure of which would constitute an unwarranted invasion of  
30 individual privacy; (2) any pending or anticipated litigation or  
31 contract negotiations; (3) any matters falling within the attorney-  
32 client privilege, to the extent that confidentiality is required in order  
33 for the attorney to exercise his ethical duties as a lawyer, or (4) any  
34 matter involving the employment, promotion, discipline or  
35 dismissal of a specific officer or employee of the association. At  
36 each meeting required under this subsection to be open to all unit  
37 owners, the participation of unit owners in the proceedings or the  
38 provision of a public comment session shall be at the discretion of  
39 the executive board, minutes of the proceedings shall be taken, and  
40 copies of those minutes shall be made available to all unit owners  
41 before the next open meeting.

42 b. The method of calling meetings of unit owners, the  
43 percentage of unit owners or voting rights required to make  
44 decisions and to constitute a quorum. The bylaws may,  
45 nevertheless, provide that unit owners may waive notice of  
46 meetings or may act by written agreement without meetings. If  
47 permitted pursuant to the bylaws, nothing in P.L. , c. (C. )  
48 (pending before the Legislature as this bill) shall be deemed to alter

1 the right of an association to permit tenants to exercise the voting  
2 rights of owners who have contracted to them leasehold interests.

3 c. The manner of collecting from unit owners their respective  
4 shares of common expenses and the method of distribution to the  
5 unit owners of their respective shares of common surplus or such  
6 other application of common surplus as may be duly authorized by  
7 the bylaws.

8 d. The method by which the bylaws may be amended, provided  
9 that no amendment shall be effective until recorded in the same  
10 office as the then existing bylaws. If the bylaws fail to provide a  
11 method of amendment, the bylaws may be amended if the  
12 amendment is approved by no less than two-thirds of the members.  
13 No bylaw shall be revised or amended solely by reference to its  
14 title.

15 The bylaws may also provide a method for the adoption,  
16 amendment and enforcement of reasonable administrative rules and  
17 regulations relating to the operation, use, maintenance and  
18 enjoyment of the units and of the common elements, including  
19 limited common elements.

20 e. Notwithstanding the provisions of any law to the contrary, a  
21 homeowners' association shall be deemed to have amended its  
22 governing documents, including its bylaws, upon the effective date  
23 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
24 to provide that:

25 (1) Any member of the governing board may be recalled and  
26 removed from office, with or without cause, by the vote of, or  
27 agreement in writing by, a majority of all owners in the planned real  
28 estate community, provided that any vote to recall shall be initiated  
29 only upon a petition of at least five percent of all owners. A special  
30 meeting of the association membership to vote for the recall of a  
31 member or members of the governing board shall thereafter be held,  
32 giving notice of the meeting as required for a meeting of members,  
33 and the notice shall state the purpose of the meeting.

34 (2) Any member of an association shall be permitted to request a  
35 hearing before the State agency charged with the oversight of  
36 planned real estate developments whenever a petition for a recall  
37 vote has been presented to a governing board in accordance with  
38 paragraph (1) of this subsection, and the board has failed to call for  
39 a special meeting of the association within 20 days of the receipt of  
40 the petition. Under such circumstances, the governing board shall  
41 be barred from expending resources to delay the holding of a  
42 special meeting, but shall be permitted to expend such funds as are  
43 necessary to confirm the validity of the petition. Notwithstanding  
44 this paragraph, if there are less than 45 calendar days until the next  
45 scheduled election, the holding of a special meeting shall not be  
46 required.

47 (cf: P.L.1993, c.30, s.4)

1        4. (New section) a. All members of a homeowners'  
2 association, which pursuant to section 1 of P.L.1993, c.30  
3 (C.45:22A-43) shall mean all unit owners in a planned real estate  
4 development, shall be permitted to be nominated for, run for, and be  
5 elected to serve in positions on, the governing or executive board of  
6 the association. Elections shall be held at least every year, and shall  
7 be conducted with strict adherence to democratic principles and  
8 fairness. Other than the initial election required to be held pursuant  
9 to section 5 of P.L.1993. c.30 (C.45:22A-47), if an association has  
10 not held an election which complies with the provisions of this  
11 section prior to the effective date of P.L. , c. (C. ) (pending  
12 before the Legislature as this bill), then an election shall be held, to  
13 be monitored by the State entity charged with administering "The  
14 Planned Real Estate Development Full Disclosure Act," P.L.1977,  
15 c.419 (C.45:22A-21 et seq.), in accordance with regulations to be  
16 promulgated pursuant to P.L. , c. (C. ) (pending before the  
17 Legislature as this bill) by that State entity.

18        b. An association shall conduct elections under the auspices of  
19 a committee of unit owners, provided that none of the members of  
20 such committee shall be current board members or candidates for  
21 the board. The committee shall function independently of the  
22 governing board, and may use the services of an independent  
23 individual or organization that is qualified in election monitoring  
24 services. The committee, independent individual, or organization,  
25 as the case may be, shall be responsible for determining the  
26 eligibility of unit owners to vote or to run for office, for counting  
27 ballots, and for verifying results. No unit owner shall be  
28 disqualified from running for office except for reason of  
29 nonpayment of assessments. An association shall give all owners at  
30 least 60 days advance notice of the election so as to allow all  
31 eligible persons who might be interested in filing as candidates a  
32 reasonable opportunity to do so. No person shall be disqualified  
33 from voting in an election for any reason other than delinquency in  
34 the payment of common expense assessments for maintenance, or  
35 other special assessments that have not been paid when due and  
36 remain unpaid at the time of the election. No person shall be  
37 disqualified from voting in an election for common expense  
38 assessments of special assessments with a pending due date.

39        c. All elections shall be conducted in a manner requiring secret  
40 ballots to be cast by owners for the election of governing board  
41 members, utilizing such safeguards as perforated, pull-off tabs from  
42 the ballot sheet, or other devices, to ensure correct counting of the  
43 votes cast. Allocating numbers to owners on ballots shall not be  
44 permitted. An owner shall be allowed, at his or her option, to cast a  
45 ballot by mail, in person, or if the association permits, by electronic  
46 ballot. A mailed ballot or an electronic ballot shall be deemed to be  
47 a proxy for the purposes of determining a quorum for the meeting at  
48 which the election is conducted. All candidates shall be afforded

1 the opportunity to observe the entire process of counting and  
2 tabulation of the ballots, either in person or through a designated  
3 representative, and shall have access to lists of persons who are  
4 eligible to vote and, after the voting has started, to any list of  
5 persons who have voted that the association may maintain. Any  
6 challenge to the validity of an election shall be submitted to the  
7 governing board and to the agency administering "The Planned Real  
8 Estate Development Full Disclosure Act," P.L.1977, c.419  
9 (C.45:22A-21 et seq.) within 30 days following the date on which  
10 written notice of the results of the election is given to members of  
11 the association. Pending the outcome of any such challenge, the  
12 persons declared to be elected by the committee, individual, or  
13 organization responsible for conducting the election shall serve as  
14 de facto officers or trustees, as the case may be. Ballots, envelopes,  
15 registration records, eligibility lists, proofs of mailing, and other  
16 voting materials shall be subject to inspection by all owners at the  
17 time of the election and shall be sealed after the election and kept  
18 unopened, in the custody of a licensed certified public accountant or  
19 the organization that conducted the election, for not less than 30  
20 days following the election, or until such later time as any challenge  
21 to the election brought within that 30-day period has been resolved  
22 and the documents are no longer required. Voting materials and  
23 procedures shall at all times be subject to inspection and review by  
24 the agency administering "The Planned Real Estate Development  
25 Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.). The  
26 parties to any dispute shall be allowed the opportunity to be present  
27 or to be represented at any such inspection and review.

28

29 5. Section 6 of P.L.1993, c.30 (C.45:22A-48) is amended to  
30 read as follows:

31 6. a. The Commissioner of Community Affairs shall cause to  
32 be prepared and distributed, for the use and guidance of  
33 associations, executive boards and administrators, explanatory  
34 materials and guidelines to assist them in achieving proper and  
35 timely compliance with the requirements of P.L.1993, c.30  
36 (C.45:22A-43 et al.) and P.L. , c. (C. ) (pending before the  
37 Legislature as this bill). Such guidelines may include the text of  
38 model bylaw provisions suggested or recommended for adoption.  
39 Failure or refusal of an association or executive board to make  
40 proper amendment or supplementation of its bylaws prior to the  
41 effective date of P.L.1993, c.30 (C.45:22A-43 et al.) or P.L. ,  
42 c. (C. ) (pending before the Legislature as this bill), as  
43 applicable, shall not, however, affect their obligation of compliance  
44 therewith on and after **[that]** those effective **[date]** dates.

45 b. The Commissioner of Community Affairs shall promulgate  
46 any rules and regulations that may be necessary to effectuate the  
47 provisions of P.L. , c. (C. ) (pending before the Legislature  
48 as this bill), pursuant to the "Administrative Procedure Act,"

1 P.L.1968, c.410 (C.52:14B-1 et seq.), not later than the first day of  
2 the third month next following the enactment of P.L. c. (C. )  
3 (pending before the Legislature as this bill).  
4 (cf: P.L.1993, c.30, s.6)

5  
6 6. This act shall take effect immediately but, except for  
7 subsection b. of section 6 of P.L.1993, c.30 (C.45:22A-48)  
8 regarding promulgation of rules and regulations, shall remain  
9 inoperative until the first day of the fourth month next following  
10 enactment.

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14

STATEMENT

15 This bill makes several modifications to the laws of the State  
16 which regulate planned real estate developments and the  
17 homeowners' associations formed to manage the commonly-owned  
18 property in such communities. There have been some court  
19 decisions indicating a need for the Legislature to clarify and adjust  
20 the laws in this area. This bill clarifies the intent of the Legislature  
21 that P.L.1993, c.30 (C.45:22A-43 et seq.) be viewed as an enabling  
22 act for homeowners' associations of non-condominium types of  
23 planned real estate developments, and it specifies that homeowners'  
24 associations, other than those managing condominium property,  
25 may hold title to the common property in the association's name.  
26 The bill prohibits the mere titling of common property in the name  
27 of the association to be construed as diminishing the ownership  
28 interests of unit owners in the common or shared elements and  
29 facilities of a planned community. This is because purchasers in all  
30 types of planned communities are sold by the developer as a  
31 proportional interest in the common elements upon their purchase  
32 of an individual home or dwelling unit, in exchange for restrictive  
33 covenants in their individual deeds obligating them to maintain  
34 those common elements. The bill requires that the common  
35 property ownership interest be proportionately equal to the  
36 obligation of each unit owner to pay for the maintenance of the  
37 common property, and that the sum of the common property  
38 interests in the community is not to exceed 100%, or one if  
39 computed fractionally.

40 In light of the shared ownership interests, the bill requires that  
41 the declaration of a planned real estate development state that  
42 membership in the homeowners' association is inherent for a  
43 purchaser of a home in such a planned community. The bill  
44 provides standards for homeowners' associations concerning access  
45 to records and elections of members to the governing boards of  
46 associations. The bill eliminates closed-meeting working sessions  
47 of an association's governing board to reflect the similar law  
48 currently applicable to public governing bodies. The bill also

1 provides a recall procedure which will authorize the removal of  
2 elected governing board members. The bill requires the State entity  
3 charged with the oversight of the "The Planned Real Estate  
4 Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21  
5 et seq.), to assist associations and owners in meeting the provisions  
6 of the bill. Currently this oversight is placed within the Department  
7 of Community Affairs.

8 The bill also requires the Commissioner of Community Affairs to  
9 distribute guidelines on the election procedures and to promulgate,  
10 within 60 days or so, any rules or regulations that may be necessary  
11 to effectuate the provisions.