

**ASSEMBLY, No. 2260**

**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

INTRODUCED JANUARY 27, 2016

**Sponsored by:**  
**Assemblyman VINCENT PRIETO**  
**District 32 (Bergen and Hudson)**

**SYNOPSIS**

The “Owners’ Rights and Obligations in Shared Ownership Communities Act.”

**CURRENT VERSION OF TEXT**

As introduced.



A2260 PRIETO

2

1 AN ACT concerning rights and obligations of homeowners living in  
2 shared ownership communities, amending various parts of the  
3 statutory law, and supplementing Title 46 of the Revised  
4 Statutes.

5

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

8

9 1. (New section) This act shall be known and may be cited as  
10 the “Owners’ Rights and Obligations in Shared Ownership  
11 Communities Act.”

12

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

14 a. Homeowners’ associations formed to manage property  
15 shared by all homeowners, whether that property be in  
16 condominiums, planned communities, or cooperatives, function as  
17 quasi-governments, often providing services in lieu of governmental  
18 services, levying assessments and imposing fines, and, through their  
19 control of maintenance and assessment levels, rulemaking powers,  
20 and enforcement efforts, have substantial power to affect both the  
21 quality of life and financial health of the individual homeowners  
22 comprising their membership.

23 b. Current statutes are ineffective to compel homeowners’  
24 associations to treat fairly the owners of homes in planned  
25 communities or the holders of proprietary leases in cooperatives, in  
26 the manner of fair treatment required for condominium owners.  
27 The “Condominium Act,” P.L.1969, c.257 (C.46:8B-1 et seq.)  
28 requires developers and associations to clearly recognize the  
29 coexisting interests of each individual homeowner in the  
30 commonly-owned facilities of a condominium, by requiring the  
31 consent of a majority of the owners prior to making changes in the  
32 governing documents. That act also provides “quasi-governmental”  
33 powers to condominium boards to impose fines on members, and to  
34 place liens on their individual homes. Similar protections and  
35 powers have not been enunciated in the statutes for owners of  
36 homes or holders of proprietary leases in planned communities and  
37 cooperatives, respectively. The Legislature attempted to expand the  
38 law to apply to all types of homeowners’ association through the  
39 enactment of P.L.1993, c.30, but that act has proven ineffective in  
40 making sure that owners in all types of these communities are  
41 treated fairly and democratically by their governing boards.

42 c. The unilateral manner in which a developer is permitted  
43 under the law to make all decisions for an association until a certain  
44 level of sales of homes have been reached may serve to protect the  
45 developer’s investment in the community while he is selling, but

**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 does not serve an association well when it is required to act as a  
2 governing board and operate in a democratic and fair manner, and  
3 in the best interests of all of the owners as required by statute.  
4 While protecting the interests of both, there is a need to clearly  
5 separate in the law (1) the interests and role of a developer of a  
6 shared ownership community from (2) the interests and role of the  
7 association formed to represent the collective shared property  
8 interests of owners of individual properties within such  
9 communities, and (3) a need to provide standards to association  
10 governing boards to foster transparent governance.

11 d. There is a further need to update New Jersey's laws to  
12 provide improved, relevant disclosure to a prospective purchaser as  
13 to the exact nature of what is being purchased, and a clear statement  
14 of their rights and responsibilities as a member of a homeowners'  
15 association. There is a need to standardize certain information, and  
16 to allow developers to submit it in an electronic format for an  
17 expedited review by the State.

18 e. There is a need to eliminate exemptions from required  
19 disclosures by developers to purchasers in smaller shared ownership  
20 communities.

21 f. In order to minimize State involvement in the affairs of  
22 homeowners' associations, and in order to reduce the need for  
23 litigation by members of associations, there is a need to create a  
24 truly objective, reliable, and low cost system of dispute resolution  
25 for shared ownership communities which will be overseen and  
26 provided by experienced neutral parties, with adequate due process  
27 protections.

28 g. There is a need to foster democratic governance in  
29 community associations in the following areas, including, but not  
30 limited to, the regulation of elections, budget adoption, access to  
31 association records, open meetings, education of owners and  
32 governing board members, and to raise awareness of the rights and  
33 obligations of owners and those owners serving their communities  
34 as governing board members. The Legislature declares that it is  
35 necessary and in the public interest to establish an independent  
36 Commission on Shared Ownership Communities, comprised of  
37 individuals living in and providing services to such communities, to  
38 function as a State liaison for such communities. The commission  
39 will promote an equitable balance between the interests of  
40 association governing boards, developers, owners, and residents in  
41 these communities, through the provision of information and the  
42 establishment of governance standards for such associations, and  
43 will serve as a coordinating entity for the provision of alternative  
44 dispute resolution services and enforcement of statutory rights.

45

46 3. (New section) As used in this act:

47 "Association," "community association" or "homeowners'  
48 association" means any legal entity, incorporated or unincorporated,

1 that is responsible for the governance over common property of a  
2 shared ownership community, regardless of whether the association  
3 was required to be formed pursuant to any law or ordinance.

4 “Association documents” means governing documents.

5 “Commission” means the Commission on Shared Ownership  
6 Communities established pursuant to section 5 of P.L. ,  
7 c. (C. ) (pending before the Legislature as this bill).

8 “Common ownership community” means a shared ownership  
9 community.

10 “Cooperative housing project” means any system of land  
11 ownership and possession in which the fee title to the land and  
12 structure is owned by a corporation in which the shareholders of  
13 that corporation each also have a long term proprietary lease or  
14 other long term arrangement of exclusive possession for a specific  
15 unit of occupancy space located within the same structure.

16 "Declaration" means the recorded document or documents  
17 containing the servitudes that create and govern the common  
18 ownership community.

19 “Director” means the Director of the Division of Consumer  
20 Affairs in the Department of Law and Public Safety.

21 “Dispute” means any disagreement between two or more parties  
22 that conforms to the requirements of section 6 of P.L. ,  
23 c. (C. ) (pending before the Legislature as this bill).

24 “Executive director” means the executive director of the  
25 Commission on Shared Ownership Communities.

26 “Governing body” or “governing board” means the council of  
27 unit owners, board of directors, trustees, or any other body  
28 authorized by a governing document to adopt binding rules or  
29 regulations.

30 "Governing documents" means the declaration and other  
31 documents, such as a deed, the articles of incorporation or articles  
32 of association, bylaws, and rules and regulations that govern the  
33 operation of an association, or determine the rights and obligations  
34 of the members of the shared ownership community.

35 "Member" means the owner of an individually-owned property  
36 bound by a servitude described in an association document to  
37 contribute to maintenance of common property or to pay mandatory  
38 dues to the association. In the case of a shared ownership  
39 community in which membership in the association and the  
40 obligation to pay assessments are independent, the term member  
41 shall mean an owner who is bound by a servitude described in an  
42 association document to contribute to maintenance of common  
43 property or to pay mandatory dues to the association.

44 “Owner” means the individual owner of a residence in a shared  
45 ownership community, and includes a unit owner in a  
46 condominium, a lot owner in a homeowners' association, and a  
47 holder of a proprietary lease in a cooperative housing project.

1 “Owners’ coordinating council” means the group to which  
2 owners may be elected to serve, other than the governing board.

3 “Party” means a developer, an owner, a governing body, or an  
4 occupant of a dwelling unit in a shared ownership community.

5 “Period of developer control” means the period of time during  
6 which a developer has a controlling voting interest in the decisions  
7 of the governing board of an association pursuant to section 5 of  
8 P.L.1993, c.30 (C.45:22A-47), prior to the developer’s interests  
9 terminating.

10 “Public Advocate” means the commissioner of the Department of  
11 the Public Advocate.

12 “Shared ownership community” means a community in which  
13 individual property owners are bound by a servitude in documents  
14 required to be recorded for real property, which servitude requires  
15 support of the shared or commonly-owned property, and the benefit  
16 and use of the shared property is appurtenant to the individually-  
17 owned property. A shared ownership community may consist of a  
18 fee-simple estate, a leasehold, or an easement, unless the  
19 responsibility for maintenance of such easement is determined by  
20 the extent of actual use, and it may be any kind of property held or  
21 enjoyed in common by owners of the individually owned property.  
22 The term shall include, but not be limited to:

23 a development subject to a declaration, master deed or other  
24 document enforced by an association;

25 a residential condominium, as that term is defined in section 3 of  
26 P.L.1969, c.257 (C.46:8B-3 et seq.); and

27 a cooperative housing project.  
28

29 4. (New section) This act is intended to supplement the law on  
30 community associations, including, but not limited to, the  
31 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), the  
32 “Horizontal Property Act,” P.L.1963, c.168 (C.46:8A-1 et seq.),  
33 “The Planned Real Estate Development Full Disclosure Act,”  
34 P.L.1977, c.419 (C.45:22A-21 et seq.), P.L.1993, c.30 (C.45:22A-  
35 43 et seq.), and any other law hereinafter enacted regulating shared  
36 ownership communities and associations. To the extent that any  
37 other law conflicts with the provisions of P.L. , c. (C. )  
38 (pending before the Legislature as this bill), the laws shall be  
39 harmonized to the extent possible; however, in the event of any  
40 unreconciled conflicts, the provisions of P.L. , c. (C. )  
41 (pending before the Legislature as this bill) shall control.  
42

43 5. (New section) a. The Legislature finds it is necessary and  
44 in the public interest to form a special State entity to:

45 (1) foster proper operation of homeowners' associations,  
46 condominium associations, and cooperative housing corporations;

1 (2) promote education, public awareness and association  
2 membership understanding of the rights and obligations of living in  
3 a shared ownership community;

4 (3) reduce the number and divisiveness of disputes, and  
5 encourage informal resolution of disputes;

6 (4) maintain property values and quality of life in these  
7 communities;

8 (5) assist and oversee in the development of coordinated  
9 community and government policies, programs, and services which  
10 support these communities; and

11 (6) prevent potential public financial liability for repair or  
12 replacement of shared ownership community facilities.

13 b. There is established in, but not of, the Department of Law  
14 and Public Safety, the Commission on Shared Ownership  
15 Communities. The commission shall serve as the State liaison for  
16 citizens residing in shared ownership communities, and shall  
17 provide educational and reference materials as requested by an  
18 association or its members. The commission, in conjunction with  
19 the director, shall adopt governance standards for shared ownership  
20 communities and their governing boards and managers, in  
21 accordance with P.L. , c. (C. ) (pending before the  
22 Legislature as this bill), to promote fair and democratic governance  
23 and good business practices within such communities, in  
24 accordance with the “Administrative Procedure Act,” P.L.1968,  
25 c.410 (C.52:14B-1 et seq.). The commission shall monitor requests  
26 for alternative dispute resolution services, and, working in  
27 conjunction with the Office of Consumer Protection within the  
28 Division of Consumer Affairs in the Department of Law and Public  
29 Safety, shall coordinate and facilitate the resolution of disputes and  
30 enforce statutory rights in such communities.

31 c. The commission shall appoint an executive director of the  
32 commission and such other personnel as may be deemed necessary.  
33 The executive director and professional staff shall serve at the  
34 pleasure of the commission and shall receive such compensation as  
35 provided by law. The executive director and professional staff, and  
36 all expenses of the commission, shall be paid from the portion of  
37 the registration fees required to be collected and allocated pursuant  
38 to section 7 of P.L.1977, c.419 (C.45:22A-27), and directed to be  
39 used for the purposes of the commission pursuant to P.L. ,  
40 c. (C. ) (pending before the Legislature as this bill). Members  
41 of the commission shall not be paid compensation, but shall be  
42 entitled to be reimbursed for reasonable travel and meal expenses,  
43 not to exceed \$100 per occurrence.

44 d. The Attorney General shall provide legal representation to  
45 the commission.

46 e. The commission shall be comprised of 12 voting members.  
47 Eleven public members shall be recommended for appointment by  
48 the Attorney General and appointed by the Governor, as follows:

- 1 (1) One member shall be a resident of a shared ownership  
2 community containing fewer than 26 units;
  - 3 (2) One member shall be a resident of a shared ownership  
4 community located in the northern region of the State;
  - 5 (3) One member shall be a resident of a shared ownership  
6 community located in the central region of the State;
  - 7 (4) One member shall be a resident of a shared ownership  
8 community located in the southern region of the State;
  - 9 (5) One member shall be a resident of a cooperative housing  
10 corporation;
  - 11 (6) One member shall be a resident of an age-restricted shared  
12 ownership community; and
  - 13 (7) One member shall be a resident of a shared ownership  
14 community containing more than 499 units.
- 15 Of the members selected under subparagraphs (1) through (7), no  
16 more than three may include current members or former members  
17 of association governing boards;
- 18 (8) One member shall be selected from developers of shared  
19 ownership communities.
  - 20 (9) Two members shall be selected from persons who are  
21 members of professions associated with shared ownership  
22 communities; one shall be an attorney, and one shall be a  
23 professional community association manager; and
  - 24 (10) One member who shall be a certified public accountant.
  - 25 (11) The Public Advocate, or the Public Advocate's designee,  
26 shall serve as an ex-officio voting member of the commission, and  
27 shall represent the rights and interests of low and moderate income  
28 households residing in dwelling units reserved by deed restriction  
29 for occupancy by such households within shared ownership  
30 communities.
- 31 f. Each public member shall serve a three-year term. Of the  
32 members first appointed, one-third shall be appointed for one-year  
33 terms, one-third shall be appointed for two-year terms, and one-  
34 third shall be appointed for three-year terms. A member shall not  
35 serve more than two consecutive full terms. A member appointed to  
36 fill a vacancy shall serve the rest of the unexpired term. Members  
37 shall continue in office until their successors are appointed and  
38 qualified.
  - 39 g. All public members shall serve at the pleasure of the  
40 Governor.
  - 41 h. The members of the commission shall elect annually a  
42 chairman of the commission. The commission shall meet at the call  
43 of the chair as often as required to perform its duties, but shall meet  
44 at least quarterly. A majority of the voting members shall be a  
45 quorum for the transaction of business, and a majority of the voting  
46 members present at any meeting may take any official action.
  - 47 i. The Director of the Division of Consumer Affairs shall  
48 arrange for offices and supplies for staff of the commission as

1 appropriate, and shall be entitled to reimbursement for all costs  
2 incurred in complying with the provisions of P.L. , c. (C. )  
3 (pending before the Legislature as this bill) from the funds available  
4 from the fees collected from developers of planned real estate  
5 developments pursuant to subsection e. of section 7 of P.L.1977,  
6 c.419 (C.45:22A-27).

7 j. The commission shall submit annually by March 1 of each  
8 year, a report to the Legislature and the Governor covering its  
9 activities of the previous calendar year, summarizing its activities,  
10 needs, and recommendations, and the extent to which the goals of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill)  
12 are being met, in the manner provided under section 2 of P.L.1992,  
13 c.164 (C.52:14-19.1).

14  
15 6. (New section) Any party in a shared ownership community  
16 may request alternative dispute resolution services from the  
17 Commission on Shared Ownership Communities established  
18 pursuant to section 5 of P.L. , c. (C. ) (pending before the  
19 Legislature as this bill), in accordance with the provisions of section  
20 7 of P.L. , c. (C. ) (pending before the Legislature as this  
21 bill).

22 For the purposes of this section, “dispute” shall be interpreted  
23 broadly to mean any matter for which a resolution is sought which  
24 is connected in some relevant manner to a shared ownership  
25 community or its association.

26 a. Prior to the filing of a request for dispute resolution with the  
27 Commission on Shared Ownership Communities, a party shall make  
28 a good faith effort to utilize the dispute resolution procedures  
29 required to be adopted by their respective community association  
30 pursuant to section 2 of P.L.1993, c.30 (C.45:22A-44), or any  
31 reallocation thereof, and section 14 of P.L.1969, c.257 (C.46:8B-  
32 14). If the dispute resolution services provided or arranged by the  
33 association do not resolve the dispute in the view of any of the  
34 parties, then any of those parties may file a request with the  
35 Commission on Shared Ownership Communities. The commission  
36 shall process all requests for dispute resolution in accordance with  
37 rules to be promulgated by the commission and the Attorney  
38 General, in accordance with the provisions of P.L. ,  
39 c. (C. ) (pending before the Legislature as this bill).

40 b. In the event a party alleges that a violation of statutory law,  
41 or any regulations promulgated thereto, or that a violation of  
42 association governing documents, has occurred by a governing  
43 board or a governing board member of an association, then that  
44 party may submit a request for review and enforcement  
45 consideration pursuant to section 8 of P.L. , c. (C. )  
46 (pending before the Legislature as this bill).

47 c. Prior to filing a lien for unpaid fines assessed upon an  
48 owner, an association shall be required to submit the matter for



1 review through arbitration arranged by the commission through the  
2 Division of Consumer Affairs in the Department of Law and Public  
3 Safety, in accordance with section 9 the provisions of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill).  
5 Only those liens based on fines imposed which are submitted in  
6 accordance with this section and section 9 shall be eligible for  
7 recording with the county recording office.

8

9 7. (New section) The Executive Director of the Commission  
10 on Shared Ownership Communities shall review all requests for  
11 dispute resolution services which are received by the commission,  
12 and shall:

13 a. issue a letter opinion advising the requester of available  
14 options or solutions, or the applicability of the provisions of  
15 P.L. , c. (C. ) (pending before the Legislature as this bill)  
16 to a particular set of facts, in lieu of the provision of alternative  
17 dispute resolution services (ADR);

18 b. arrange for ADR services to be provided within a reasonable  
19 period of time through the dispute resolution programs of the  
20 Division of Consumer Affairs in the Department of Law and Public  
21 Safety, in accordance with regulations to be promulgated by that  
22 department;

23 c. arrange for a hearing to proceed in accordance with section 8  
24 of P.L. , c. (C. ) (pending before the Legislature as this  
25 bill) for an alleged violation of regulatory or statutory law;  
26 provided, however, that the executive director may arrange for  
27 ADR services in lieu of a hearing for allegations of violations of  
28 governing documents, at his discretion;

29 d. arrange for a special hearing panel for claims concerning  
30 construction deficiencies; or

31 e. request the commission's preliminary review of any request  
32 which the executive director deems frivolous, unreasonable, or  
33 lacking any basis in fact, prior to arranging for ADR services, or  
34 submitting a matter for review for enforcement action. If the  
35 commission deems the request frivolous, unreasonable, or lacking  
36 any basis in fact, it shall reject the request.

37 The executive director of the commission shall be authorized to  
38 act on behalf of the commission to process initial claims and make  
39 arrangements for the provision of dispute resolution services or  
40 hearings. The executive director of the commission shall also be  
41 authorized to act on behalf of the commission to impose a stay on  
42 the actions of any governing board pending the processing and  
43 resolution of a request.

44

45 8. (New section) a. The executive director shall arrange for a  
46 hearing for allegations of a violation of statutory or regulatory law,  
47 or may arrange for a hearing for allegations of violations by  
48 members of the governing board of the governing documents of an

1 association, within 10 business days for claims of election fraud,  
2 and 90 calendar days of the receipt of all other types of requests, as  
3 follows:

4 The executive director of the commission shall arrange for the  
5 services of an arbitrator through the local consumer affairs offices  
6 of the Division of Consumer Affairs, through any other dispute  
7 resolution programs of the division, or alternatively, by  
8 interdepartmental agreement, may arrange for the services of the  
9 Department of the Public Advocate, to conduct the hearing which  
10 shall be a binding arbitration, or, if a majority of its members  
11 approves, the commission may convene a hearing panel, and may  
12 make determinations with at least five of its members participating.

13 b. At the hearing authorized to be conducted pursuant to this  
14 section, the panel or arbitrator, as the case may be, shall give full  
15 hearing to both the complaint of the resident or residents and to any  
16 evidence in contradiction or mitigation that the association, if  
17 present or represented and offering such evidence, may present. At  
18 the conclusion of the hearing, the arbitrator or panel shall  
19 determine, if required from the circumstances of the case:

20 (1) whether the governing documents are deficient under the  
21 law, or violate any provision of P.L. , c. (C. ) (pending  
22 before the Legislature as this bill) or any other statute or regulation  
23 relevant to homeowners' associations;

24 (2) whether the actions of any members of the governing board  
25 or its employees or agents violate statutory law;

26 (3) whether the governing documents were violated by any  
27 party; or

28 (4) under a claim of election fraud, whether the election  
29 proceedings comported with the standards promulgated by the  
30 commission, and if they did not, should the election be voided, and  
31 a new election ordered.

32 c. (1) On all matters the commission shall have the authority,  
33 on the basis of the arbitrator's findings or the hearing panel's  
34 determination, to install a temporary governing body in the event it  
35 is determined that no properly-elected members are serving on the  
36 governing body.

37 (2) The commission shall also have the powers necessary to  
38 reform deficient governing documents that do not comply with the  
39 provisions of P.L. , c. (C. ) (pending before the Legislature  
40 as this bill), or any other State or federal law to make those  
41 documents comply.

42 (3) The commission shall have the power to impose fines on  
43 governing board members, or a governing board's employees or  
44 agents, equal to those powers granted by the Legislature to  
45 governing boards permitting them to impose fines on members of  
46 associations.

47 (4) The commission shall have the power to stay a lien filing for  
48 an assessment, attorney's fees, or late fees if it is determined

1 through either an ADR or a hearing that the basis for the lien is not  
2 warranted or on the basis that the association has not registered with  
3 the commission; the commission shall also have the power to order  
4 a release of lien to be prepared and filed by an association.

5 (5) The commission may:

6 (a) petition the court to appoint a receiver of a shared ownership  
7 development in any case in which the developer has abandoned the  
8 development;

9 (b) in the case of a shared ownership community which has  
10 more than 50 percent of its units foreclosed upon, appoint a  
11 governing board from the members of the association who are not  
12 banks, mortgagees or other lending institutions which hold the units  
13 through foreclosures, and appoint a property manager, which  
14 appointment power shall terminate upon the owners, other than  
15 foreclosing banks or mortgages, holding a 51 percent voting interest  
16 in the association, electing their own governing board and  
17 contracting on their own behalf for management services.

18 (c) appoint to the governing board of an association a temporary  
19 member to replace the voting interests of the developer, in the event  
20 the developer has filed for bankruptcy.

21 (d) appoint a temporary property manager for an association that  
22 has a dispute under review, when that association has no properly  
23 elected governing board members and no property manager, which  
24 appointment shall be effective until valid elections are held or until  
25 the community terminates in accordance with law.

26 d. The commission, in conjunction with the Director of the  
27 Division of Consumer Affairs and the Director of the Division of  
28 Codes and Standards in the Department of Community Affairs,  
29 shall empanel a select advisory panel for claims concerning  
30 construction defects in common elements. The panel should be  
31 comprised, to the extent feasible, of individuals with significant  
32 knowledge in the construction of residential housing and other  
33 structures, and may include any of the following:

34 (1) members of a county construction board of appeals;

35 (2) members of the code advisory board in the Department of  
36 Community Affairs; or

37 (3) local code enforcement officials;

38 but shall not include any officials or individuals who were or are  
39 serving in a capacity which gave or gives them responsibility in any  
40 manner for oversight of the specific construction which is the  
41 subject of the dispute resolution.

42 Upon receiving a claim from an owners' coordinating council  
43 concerning construction deficiencies or warranty issues pertaining  
44 to common elements of a shared ownership community, the  
45 executive director of the commission shall arrange for arbitration  
46 for claims of construction defects in the common elements of a  
47 shared ownership community and shall be authorized to utilize the

1 expertise of the select advisory panel to make a determination of  
2 developer negligence or liability.

3 e. Hearings under P.L. , c. (C. ) (pending before the  
4 Legislature as this bill may be conducted:

5 (1) by the division at the local consumer affairs office servicing  
6 the region in which the homeowners' association is located;

7 (2) by the commission with at least five of its members  
8 participating, if no local panel is available to the division; or

9 (3) by an arbitrator selected by the director.

10 f. (1) If any person summoned to be examined pursuant to this  
11 section shall refuse to be sworn, or to affirm, or to testify, or to  
12 answer a proper question, or to produce the books, papers,  
13 documents or tangible things demanded, or shall otherwise engage  
14 in misconduct, the Superior Court may, on motion, and after  
15 affording that person the opportunity to be heard, punish that person  
16 in the same manner as like failure is punishable in a case pending in  
17 the court.

18 (2) Orders of an arbitrator under this section, if binding  
19 arbitration has been selected, shall be binding upon the parties. The  
20 failure of any person to obey a binding order of the arbitrator issued  
21 in accordance with this section shall be punishable as contempt of  
22 court by the court in the same manner as like failure is punishable  
23 in an action pending in the court when the matter is brought before  
24 the court by motion filed by the Attorney General and supported by  
25 affidavit stating the circumstances. In the case of a finding by the  
26 commission that an officer or trustee of the governing body  
27 knowingly or willfully failed to follow the governing documents,  
28 such officer or trustee shall be deemed to have vacated their  
29 position on the governing body, and a new election for his or her  
30 position shall be held within 90 days of the finding.

31  
32 9. (New section) a. The commission shall arrange for  
33 arbitration on all proposed lien filings based on fines imposed  
34 within 15 days of submission by an association. A determination to  
35 approve or disapprove an association's request for lien filing on the  
36 basis of fines imposed shall be made no later than 60 days from the  
37 date of the claim submission. Extensions may be granted to any  
38 party to submit additional information; however, the commission  
39 shall have the discretion to disapprove a lien filing upon the  
40 repeated failure of an association to provide requested information  
41 to either entity.

42 b. The director shall establish expedited procedures to approve  
43 or disapprove lien filings for unpaid fines, and shall establish the  
44 forms required to be filed with the county clerk to authorize such  
45 lien filing when approved pursuant to this section.

46 c. Unless otherwise specified in P.L. , c. (C. )  
47 (pending before the Legislature as this bill), all hearings and  
48 alternative dispute resolution procedures shall be conducted in

1 accordance with procedures adopted by the agency providing the  
2 services, and relevant applicable law. Dispute resolution may be  
3 handled as a binding arbitration at the discretion of the commission;  
4 if so, an appeal may be made only to the extent allowed for appeals  
5 made under binding arbitration. An arbitrator shall make a final  
6 determination in any matter no later than 90 days from the last  
7 hearing date, but may grant reasonable continuances of the hearing  
8 in order to fully investigate the matter.

9  
10 10. (New section) Upon the adoption of the regulations required  
11 to be promulgated pursuant to section 14 of P.L. , c. (C. )  
12 (pending before the Legislature as this bill), every association as  
13 defined under section 3 of P.L. , c. (C. ) (pending before  
14 the Legislature as this bill) shall complete and submit an annual  
15 informational disclosure to the Commission on Shared Ownership  
16 Communities established pursuant to section 5 of  
17 P.L. , c. (C. ) (pending before the Legislature as this bill),  
18 on such form and in such a manner as the commission shall require.  
19 Thereafter, an association shall be required to disclose these items  
20 annually to the commission, in accordance with its regulations.  
21 There shall be no fees required of any association, or any member  
22 of an association, for submitting such information.

23 At a minimum, the disclosure form shall require:

24 The name, location, and address of the shared interest  
25 community, and the number of dwelling units located therein;

26 A statement as to whether the association is incorporated, and the  
27 location of the corporate agent;

28 The name of the most recently-elected officers or trustees of the  
29 association, the length of their terms of office, and contact  
30 information, including mailing addresses for each of them;

31 The name of the agent for service of process of the association;

32 The name of the developer of the community, if still actively  
33 selling or renting in the community, and the developer's current  
34 address, if known; and

35 Any additional information that the commission may deem  
36 useful to carry out its purposes under P.L. , c. (C. )  
37 (pending before the Legislature as this bill).

38  
39 11. (New section) a. It shall be unlawful under P.L.1960, c.39  
40 C.56:8-1 et seq.) for an association which has been formed to  
41 manage a shared ownership community to violate the provisions of  
42 P.L. , c. (C. ) (pending before the Legislature as this bill.)

43 b. It shall be unlawful under P.L.1960, c.39 (C.56:8-1 et seq.)  
44 for a developer of a shared ownership community to violate the  
45 provisions of P.L. , c. (C. ) (pending before the Legislature  
46 as this bill).

47 c. The Alternative Dispute Resolution Program established by  
48 the Division of Consumer Affairs in the Department of Law and

1 Public Safety shall be expanded to include dispute resolution  
2 services to homeowners and residents of shared ownership  
3 communities. The expanded program shall permit trained  
4 volunteers who are also residents or professional employees of such  
5 communities to participate in the provision of dispute resolution,  
6 provided that for each dispute at least three volunteers shall be  
7 utilized, and no more than one of them shall be an employee of, or  
8 sit as a current member of, a homeowners' association governing  
9 board, or has served as a member of a homeowners' association  
10 governing board within the immediate preceding two years. A  
11 property manager currently employed by an association shall not  
12 participate as a dispute resolution volunteer for that association.

13 d. The director shall promulgate such rules and regulations as  
14 necessary to effectuate this section pursuant to the "Administrative  
15 Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

16

17 12. (New section) a. The activities of the Commission on  
18 Shared Ownership Communities shall be funded from the fees  
19 imposed upon developers upon the registration of planned  
20 developments pursuant to section 7 of P.L.1977, c.419 (C.45:22A-  
21 27), as amended by P.L. , c. (C. ) (pending before the  
22 Legislature as this bill).

23 b. In the event that these fees described in section a. of this  
24 section are insufficient to defray the costs associated with the  
25 provision of dispute resolution services under the provision of  
26 P.L. , c. (C. ) (pending before the Legislature as this bill),  
27 the provider of dispute resolution services may charge an  
28 association a reasonable fee to defray the costs of dispute resolution  
29 services provided, or administrative costs incurred in connection  
30 with, the provision of those services.

31 c. Dispute resolution services shall be deemed to be provided  
32 upon the agreement of the commission to hear, or arrange for  
33 mediation or arbitration. Those associations that have not provided  
34 information as required pursuant to section 10 of P.L. ,  
35 c. (C. ) (pending before the Legislature as this bill) as of the  
36 date dispute resolution services are deemed provided shall do so  
37 immediately prior to the provision of services.

38

39 13. (New section) This section shall be known and may be cited  
40 as the "Bill Of Rights And Responsibilities For Owners In Shared  
41 Ownership Communities."

42 a. The commission shall publish the following and post on its  
43 Internet site, the following information, as set off by quotation  
44 marks:

45 "Bill Of Rights And Responsibilities For Owners In Shared  
46 Ownership Communities.

47 As a member of a shared ownership community association:

1 (1) You have the right to be informed before buying a home in a  
2 shared ownership community of the community's governing  
3 documents, financial condition, assessments and fees, and its rules  
4 and regulations. You have the duty to ask for this information from  
5 the seller, to read and understand it, and to obey the rules if you buy  
6 the home; You have the right to notify the Division of Consumer  
7 Affairs in the Department of Law and Public Safety if a developer  
8 has not furnished you with this information;

9 (2) You have the right to be treated with respect by your  
10 neighbors and by the governing board members and managers of  
11 your community. You have the duty to treat your neighbors,  
12 directors, officers, and managers with respect.

13 (3) You have the right to privacy consistent with the law and the  
14 reasonable rules of the community. You (and your tenants, if any)  
15 have the duty to respect the rights of your neighbors to enjoy their  
16 privacy.

17 (4) You have the right to prompt and effective service from your  
18 association's governing board members or management. You have  
19 the duty to pay your legitimately imposed assessments on time.

20 (5) You have the right to vote in elections and to vote on the  
21 adoption of new rules, as permitted under State law; and to vote on  
22 the assessments, when permitted by law or community rules. You  
23 have the duty to inform yourself of the issues, and to vote on them.

24 (6) You have the right to vote to approve the sale of any of the  
25 common elements or common property of the community as  
26 provided under State law; and you have the right to vote to approve  
27 the construction of any new common facilities or common elements  
28 if those facilities were not listed on the master deed or declaration  
29 as "to be built" when you purchased your individual property in the  
30 community, as provided under State law. You have the duty to  
31 participate in voting when required for association actions.

32 (7) You have the right to fair elections and to be nominated for  
33 and to run for office. You have the duty to make sure that elections  
34 are fair and that candidates for whom you vote are qualified.

35 (8) You have the right to honest and reasonable government  
36 from your elected board and the managers it chooses. You have the  
37 duty to participate in the affairs of the community by volunteering  
38 your time and talents as needed and by informing yourself of the  
39 board's activities.

40 (9) You have the right to be informed of your community's acts  
41 and financial condition, including balances in reserve accounts, and  
42 to inspect, and make copies of, its books and records. You have the  
43 duty to know and understand its rules, and to provide to the  
44 community any information required by the rules, unless prohibited  
45 by law.

46 (10) You have the right to meet with your fellow owners to  
47 discuss the community's and the board's conduct, free of charge.  
48 You have the duty to obtain the information necessary to form a fair

1 and balanced opinion, and to promote positive solutions for the  
2 good of the community.

3 (11) You have the right to fair treatment if you are charged with  
4 a violation of the community rules. This includes the right to know  
5 what rule is involved and to a fair hearing, and a right to appeal any  
6 violation to the Commission on Shared Ownership Communities.  
7 You have the duty to respond to any such claim promptly and  
8 honestly, and to cooperate in good faith and in a civilized manner in  
9 an effort to resolve the dispute.

10 (12) If you are unable to resolve disputes directly with your  
11 community, you have the right to bring your dispute to the  
12 Commission on Shared Ownership Communities, where it may be  
13 resolved without the need for expensive litigation. You have the  
14 duty first to bring your dispute to the attention of the community's  
15 governing board and to allow the board a fair opportunity to  
16 respond, and to use whatever dispute resolution procedures your  
17 community requires, provided those procedures comport with State  
18 law; if you bring your dispute to the commission you have the duty  
19 to cooperate in the commission's complaint process and to treat  
20 other parties with respect.

21 (13) You have the right to architectural and other rules (such as  
22 parking or pets) that are properly adopted and published, that are  
23 clear and reasonable, and that are fairly and consistently enforced.  
24 You have the right to seek changes to any rules that you believe are  
25 obsolete or inappropriate. You (and your tenants, if any) have the  
26 duty to obey the rules, to follow the proper procedures to obtain any  
27 required permission for modifications you wish to make, and to  
28 keep the area around your home clean and free of trash, pests, and  
29 other nuisances.”

30 b. Nothing in this section shall be construed as permitting the  
31 rights enumerated in this section to be waived in any manner by any  
32 association or owner.

33 c. Nothing in this section shall be construed as prohibiting the  
34 waiver of any constitutional rights by an owner, provided that any  
35 waiver so executed shall be in writing and shall contain  
36 documentation that the owner has:

37 (1) a specific knowledge of the constitutional right being  
38 waived; and

39 (2) made an intentional decision to abandon the protection of the  
40 constitutional right.

41

42 14. (New section) a. Within 120 days of the effective date of  
43 P.L. , c. (C. ) (pending before the Legislature as this bill),  
44 the commission shall adopt, and from time to time review for  
45 amendment, minimum standards for conduct for shared ownership  
46 community associations, which shall include, but not be limited to,  
47 all the requirements for such associations as provided in  
48 P.L. , c. (C. ) (pending before the Legislature as this bill) on



1 such matters as elections, including recall elections, voting, access  
2 to records, maintenance and retention of records, minutes,  
3 association-provided dispute resolution services, bidding, audits,  
4 and conflicts of interests. The commission may adopt more specific  
5 requirements for each of these matters than those required pursuant  
6 to P.L. , c. (C. ) (pending before the Legislature as this  
7 bill), provided that the standards adopted comport with the intent of  
8 the Legislature to foster democracy and fairness in matters of  
9 governance by an association, and protect the rights of owners to  
10 vote on matters guaranteed under P.L. , c. (C. ) (pending  
11 before the Legislature as this bill).

12 b. The commission shall establish a program and materials for  
13 the training of owners who are elected to serve on the governing  
14 boards of shared ownership communities. At least two hours of  
15 training shall be mandatory on the part of board members, which  
16 shall be completed no later than 180 days prior to the expiration of  
17 the member's term of office. The program shall provide guidance  
18 on all of the information relevant to a board member effectively  
19 serving at the helm of their community, and shall include good  
20 business practices, model record keeping procedures, legal  
21 requirements for boards, the making of a budget and maintaining  
22 reserve accounts, information on various State entities available to  
23 assist the board, and any other information the commission deems  
24 relevant. The commission shall have the authority to remove a  
25 board member who does not complete the training required pursuant  
26 to this section.

27 c. The commission shall adopt forms and procedures for the  
28 disclosure of information by associations as required pursuant to  
29 section 10 of P.L. , c. (C. ) (pending before the  
30 Legislature as this bill).

31 d. The commission shall maintain an Internet site to effectuate  
32 the purposes of P.L. , c. (C. ) (pending before the  
33 Legislature as this bill).

34 The commission shall adopt the regulations necessary to  
35 effectuate this section pursuant to the "Administrative Procedure  
36 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

37  
38 15. (New section) Within 120 days of the effective date of  
39 P.L. , c. (C. ) (pending before the Legislature as this bill),  
40 the director, in consultation with the Commission of Shared  
41 Ownership Communities, established pursuant to section 5 of  
42 P.L. , c. (C. ) (pending before the Legislature as this bill),  
43 shall:

44 a. cause to be prepared and distributed in written form and on  
45 available on the Internet, a booklet, which shall be made available  
46 to the general public, to associations, and to homeowners in shared  
47 ownership communities, and which shall serve as a general guide to  
48 community associations. The booklet shall be distributed free of

1 charge by the association to each homeowner and by each developer  
2 to prospective purchasers prior to the signing of a sales contract; it  
3 shall be the duty of each seller of a unit to provide a copy of the  
4 booklet to a purchaser of the unit before the time of signing of the  
5 sales contract. The booklet shall include at least the following:

6 (1) An explanation of the nature of home ownership in a shared  
7 ownership community and a glossary of relevant terms, including,  
8 but not limited to, "master declaration," "bylaws," "master deed,"  
9 "covenants and restrictions," "common elements," "liens," "fines,"  
10 "rules," "alternative dispute resolution," "fees," and "governing  
11 board";

12 (2) A description of the rights and responsibilities of  
13 homeowners, including those contained in section 12 of  
14 P.L. , c. (C. ) (pending before the Legislature as this bill);

15 (3) A description of the duties and powers of, and restrictions  
16 on, governing boards, including reference to any applicable statutes,  
17 regulations, and relevant court decisions. The booklet shall include  
18 information concerning conflict of interest requirements applicable  
19 to governing board members, officers, and to professionals hired by  
20 associations and shall also include reference to any other sources of  
21 information that may be recommended by the commission as being  
22 of assistance to governing board members and officers in the  
23 discharge of their duties;

24 (4) A description of the statutory and regulatory requirements  
25 for association bylaws or rules and such other material as the  
26 commission shall deem useful;

27 (5) A description of the special rules applicable to units which  
28 are subject to affordability controls, including municipal ordinances  
29 or other items which may affect the payment of common expenses,  
30 and reference materials concerning resale controls which may apply  
31 to such units;

32 (6) A description and reference to the federal law concerning the  
33 housing for older persons exception from discrimination under the  
34 federal Fair Housing Act Amendments of 1988, which applies to  
35 age-restricted communities; and

36 (7) A listing of documents and other information that a potential  
37 purchaser of a unit in a shared ownership community should obtain  
38 before entering into a contract to purchase a unit, including, but not  
39 limited to: copies of the association's governing documents; a copy  
40 of the latest capital reserve study, if any, showing the condition, life  
41 expectancy, and replacement costs of major mechanical systems and  
42 other common elements; any litigation pending against the  
43 association; any pending notices or orders issued by any  
44 governmental entity; the association's procedures for alternate  
45 dispute resolution and an explanation of statutory and regulatory  
46 requirements, process of adopting rules, conducting elections,  
47 providing access to records, approval of budgets, and review of  
48 homeowners' applications to do work on their units; delinquency

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

9 b. make publicly available by means of electronic Internet  
10 technology all of the material required pursuant to this section.

11 The director shall promulgate such regulations as are necessary  
12 to effectuate this section pursuant to the "Administrative Procedure  
13 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).  
14

15 16. (New section) a. In a shared ownership community, each  
16 purchaser of a dwelling unit, or leasehold interest derived through  
17 the purchase of shares, in the case of a cooperative housing  
18 corporation, shall be deemed to have a proportional ownership  
19 interest in the common elements of the shared ownership  
20 community, which interests shall arise concomitantly with the  
21 purchase of a unit, house, or leasehold unit in the shared ownership  
22 community. The ownership interests in the shared property of a  
23 shared ownership community for each purchaser of a dwelling unit,  
24 house, or cooperative leasehold unit shall be expressed in the  
25 association documents as follows:

26 (1) for a condominium, a proportional undivided interest  
27 assigned to each unit, as required pursuant to P.L.1969, c.257  
28 (C.46:8B-1 et seq.);

29 (2) for a cooperative, a proportional interest in the cooperative  
30 corporation, expressed in shares; or

31 (3) for a planned development, a proportional interest assigned  
32 in the same proportion as the common expense liability for each  
33 member; however, title to the common property may be in the name  
34 of the association collectively on behalf of all members, or it may  
35 be reflected as an interest allocated to each individually-owned  
36 property, in the manner as permitted for a condominium pursuant to  
37 P.L.1969, c.257 (C.46:8B-1 et seq.).

38 b. A developer of a shared ownership community shall be  
39 deemed to be the owner of any unsold units, and any common  
40 elements interests assigned to such unsold units. During the period  
41 of developer control of an association as defined pursuant to section  
42 5 of P.L.1993, c.30 (C.45:22A-47), a developer shall be deemed the  
43 owner of the interests in the common elements which have not  
44 otherwise been assigned to individual owners.

45 c. The provisions of this section shall be deemed to control all  
46 declarations, master deeds, and bylaws, regardless of the date of the  
47 formation of the shared ownership community.

1        17. (New section) Ownership rights in the common property of  
2 a shared ownership community shall be construed broadly to:  
3        a. prohibit long-term developer control of an association  
4 beyond the time period authorized under section 5 of P.L.1993, c.30  
5 (C.45:22A-47);  
6        b. prohibit the delegation of powers from a constituent  
7 association to a master association in the community whenever the  
8 delegation of powers affects property, or the responsibility for  
9 property, which is not the common property of all members of the  
10 master association or affects services not shared in common by all  
11 members of the community; and  
12        c. require a vote of approval by at least 67 percent of the  
13 members of the association prior to the sale of any common  
14 elements or to the construction of any new common elements which  
15 were not listed in the association documents to be constructed by  
16 the developer or the association, and which are not considered  
17 repairs or enhancements to current common elements under the  
18 criteria set forth in section 21 of P.L. , c. (C. ) (pending  
19 before the Legislature as this bill). No action shall lie or be brought  
20 by an association to compel the members of the association to vote  
21 to approve any of the items in this subsection.

22  
23        18. (New section) The governing board and its agents, servants,  
24 and employees, shall act in accordance with the properly recorded  
25 bylaws of the association. For the purposes of this section, properly  
26 recorded means recorded in the official government recording office  
27 for such documents in the county in which the real property is  
28 located.

29        a. In addition to the provisions of P.L.1969, c.257 (C.46:8B-1  
30 et seq.) and P.L.1993, c.30 (C.45:22A-43 et seq.) which provide  
31 requirements for bylaws, the bylaws of an association shall include,  
32 and, if they do not, shall be deemed to include, the following  
33 provisions:

34        (1) The form of administration of the association shall be  
35 described, providing for a governing board, specifying the powers,  
36 duties, manner of selection and removal, and compensation, if any,  
37 of the officers, directors, or trustees of the governing board. Unless  
38 otherwise provided in the bylaws, the governing board shall consist  
39 of five members. The governing board shall elect from among its  
40 members a president, vice president, secretary, and treasurer, who  
41 shall perform the duties of those offices customarily performed by  
42 officers of nonprofit corporations. On or after the effective date of  
43 P.L. , c. (C. ) (pending before the Legislature as this bill),  
44 these officers shall serve without compensation, unless  
45 compensation is authorized by a vote of 67 percent of all members  
46 eligible to vote, which shall be effective for a period of no longer  
47 than three years. The governing board may appoint and designate  
48 other officers and assign them such duties as it deems appropriate.

1       (2) (a) The method for providing notice to members and the  
2 holding of meetings of the association; provided that a meeting of  
3 the members shall be held at least annually, and a requirement that  
4 minutes be kept at every meeting;

5       (b) inclusion in at least one meeting notice annually a disclosure  
6 of the fact that owners may file requests for dispute resolution with  
7 the Commission on Shared Ownership Communities and a  
8 statement made to that effect at that meeting; and

9       (c) a requirement that the minutes of all meetings of the  
10 members and of all meetings of the governing board be kept and  
11 made available to the members within a reasonable time after the  
12 meeting. Minutes shall be kept in a businesslike manner, shall  
13 reflect accurately what was discussed at the meeting, but need not  
14 be verbatim, and shall be available for inspection by members, or  
15 their authorized representatives, and board members at reasonable  
16 times. The association shall retain these minutes for a period of not  
17 less than seven years. Minutes of closed sessions shall be made  
18 available in a redacted form if required pursuant to regulations of  
19 the Commission on Shared Ownership Communities.

20       (3) The share or percentage of, and the manner of sharing,  
21 common expenses for each member shall be stated. The manner of  
22 sharing the common expenses for each member of a planned  
23 development constructed on or after the effective date of  
24 P.L. , c. (C. ) (pending before the Legislature as this bill),  
25 containing only single family homes on separate lots shall be on a  
26 per unit basis. Members of associations of shared ownership  
27 communities constructed prior to the effective date of  
28 P.L. , c. (C. ) (pending before the Legislature as this bill)  
29 shall be permitted to petition their association governing board to  
30 call for a meeting to vote to change the method of sharing the  
31 common expenses, upon obtaining the signatures of at least five  
32 percent of all of the members of the association. The share or  
33 percentage of obligation for the common expenses shall not be  
34 computed on a different basis than the allocation of interests in the  
35 common property among the individual unit or home owners in any  
36 community.

37       (4) The manner of collecting from the members their shares of  
38 the expenses for the maintenance of the shared ownership  
39 community property shall be stated. Assessments shall be made  
40 against members not less frequently than quarterly, in amounts not  
41 less than are required to provide funds in advance for payments of  
42 all of the anticipated current operating expenses and for all of the  
43 unpaid operating expenses previously incurred. The Commission  
44 on Shared Ownership Communities may vary from the provisions  
45 of this paragraph by regulation.

46       (5) The method by which the bylaws may be amended  
47 consistent with the provisions of P.L. , c. (C. ) (pending  
48 before the Legislature as this bill) shall be stated. If the bylaws fail

1 to provide a method of amendment, the bylaws may be amended if  
2 the amendment is approved by no less than two-thirds of the  
3 members. No bylaw shall be revised or amended by reference to its  
4 title only.

5 (6) The officers and directors or trustees of the association shall  
6 have a fiduciary relationship to the members.

7 (7) (a) Any member of the governing board may be recalled and  
8 removed from office, with or without cause, by the vote of, or  
9 agreement in writing by, a majority of all members of the  
10 association, provided that any vote to recall shall be initiated only  
11 upon a petition of at least five percent of all owners. A special  
12 meeting of the association membership to vote for the recall of a  
13 member or members of the governing board shall thereafter be held,  
14 giving notice of the meeting as required for a meeting of members,  
15 and the notice shall state the purpose of the meeting.

16 (b) Any member of an association shall be permitted to request a  
17 hearing before the commission whenever a petition for a recall vote  
18 has been presented to a governing board in accordance with this  
19 subparagraph, and the board has failed to call for a special meeting  
20 of the association within 20 days of the receipt of the petition.  
21 Under such circumstances, the governing board shall be barred from  
22 expending resources to delay the holding of a special meeting, but  
23 shall be permitted to expend such funds as are necessary to confirm  
24 the validity of the petition. The commission may consider whether  
25 it is necessary to escrow funds of any association pending such a  
26 special meeting. Notwithstanding this subparagraph, if there are  
27 less than 45 calendar days until the next scheduled election, the  
28 holding of a special meeting shall not be required.

29 (8) A procedure for notifying the governing board if a member  
30 intends to make an audio or video recording of a meeting; provided  
31 that permission to make an audio recording for a member's own use  
32 shall not be denied to a member, regardless of whether the  
33 governing board arranges to record the same meeting. The board  
34 shall announce prior to the start of a meeting whether an audio or  
35 video recording is being made.

36 (9) A requirement for maintaining adequate insurance to protect  
37 the association and the property comprising the common elements  
38 of the shared ownership community. Insurance shall cover  
39 replacement costs, and deficits in insurance coverage on common  
40 elements shall not be chargeable to any individual unit owner. A  
41 copy of each policy of insurance in effect shall be made available  
42 for inspection by members at reasonable times.

43 (10) A method of adopting and of amending administrative rules  
44 and regulations governing the details of the operation and use of the  
45 shared ownership community property; and

46 (11) Restrictions on, and requirements respecting the time,  
47 place, and manner of the use of the common community property,  
48 so long as such restrictions and requirements are not inconsistent

1 with the association documents, P.L. , c. (C. ) (pending  
2 before the Legislature as this bill), the regulations of the  
3 Commission on Shared Ownership Communities, and any other  
4 local, federal, or State law.

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

17 c. The Commission on Shared Ownership Communities may  
18 promulgate more specific guidelines for bylaw provisions, in  
19 accordance with the provisions and purposes of P.L. ,  
20 c. (C. ) (pending before the Legislature as this bill), in order to  
21 foster transparent and democratic governance in shared ownership  
22 communities. Such guidelines may include bidding procedures,  
23 restrictions on conflicts of interests, meeting and minutes  
24 requirements, or any matters which the commission deems  
25 necessary to minimize disputes and promote transparent and  
26 democratic governance within shared ownership communities.

27  
28 19. (New section) a. Any management, employment, service or  
29 maintenance contract, or contract for the supply of equipment or  
30 material which is directly or indirectly made by or on behalf of an  
31 association, during the period of developer control pursuant to  
32 section 5 of P.L.1993, c.30 (C.45:22A-47), shall not be entered into  
33 for a period in excess of two years. Any such contract or lease may  
34 not be renewed or extended for periods in excess of two years and  
35 at the end of any two-year period, an association may terminate any  
36 further renewals or extensions thereof.

37 b. Notwithstanding the above, any management contract or  
38 agreement entered into after the effective date of P.L. ,  
39 c. (C. ) (pending before the Legislature as this bill) shall  
40 terminate 90 days after the first meeting of a governing board  
41 whose decisions are not subject to the voting control of the  
42 developer pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47),  
43 unless the owner-controlled governing board ratifies the contract or  
44 agreement.

45  
46 20. (New section) a. An association shall maintain all records  
47 concerning the business and governance matters of the association,

1 in accordance with generally accepted accounting standards and  
2 principles.

3 The records required to be maintained shall include, but not be  
4 limited to:

5 (1) records of receipts and expenditures, cancelled checks,  
6 general ledgers, and copies of contracts or any other legal  
7 documents, including, but not limited to, opinions of the association  
8 attorney construing the governing documents, correspondence with  
9 any federal, State, or local governmental entity; and

10 (2) An account for each member, designating the name and  
11 current mailing address of the member, the amount of each  
12 assessment, the dates on which and amounts in which the  
13 assessments come due, the amount paid on the account, and the  
14 balance due.

15 b. Records shall be open to inspection by association members  
16 or their authorized representatives at reasonable times, and written  
17 summaries of such records shall be supplied at least annually to the  
18 members or their authorized representatives. All records required  
19 to be available for inspection by association members shall be  
20 maintained by an association for a period of not less than seven  
21 years. The records may be permitted to be maintained in a  
22 graphically-based form on an easily accessible electronic media,  
23 from which copies may be reproduced.

24 (1) An association shall not charge a fee to an owner for  
25 viewing or copying association records which exceeds the cost  
26 permitted to be charged to a requester under section 6 of P.L.2001,  
27 c.404 (C.47:1A-5).

28 (2) A requesting owner who is denied access to an association  
29 record by the custodian of the record, at the option of the owner,  
30 may:

31 (a) institute a proceeding to challenge the custodian's decision  
32 by filing an action in Superior Court which shall be heard in the  
33 vicinage where it is filed by a Superior Court Judge who has been  
34 designated to hear such cases because of that judge's knowledge and  
35 expertise in matters relating to access to records; or

36 (b) in lieu of filing an action in Superior Court, file a request for  
37 assistance in obtaining records with the Commission on Shared  
38 Ownership Communities established pursuant to section 5 of  
39 P.L. , c. (C. ) (pending before the Legislature as this  
40 bill).

41 In the event a proceeding is instituted under subparagraph (a) of  
42 this paragraph, the failure of the association to permit inspection of  
43 its accounting records by members or their authorized  
44 representatives shall entitle any persons prevailing in an  
45 enforcement action to recover reasonable attorney's fees from the  
46 person in control of the books and records, if that person, who  
47 directly or indirectly, knowingly denied access to the books and  
48 records for inspection.



1       21. (New section) Notwithstanding any association document,  
2 or any law to the contrary, on or after the effective date of  
3 P.L. , c. (C. ) (pending before the Legislature as this bill):

4       a. Construction of any new common element not listed or  
5 contemplated on the master deed or declaration shall require an  
6 amendment to the declaration. For the purposes of this subsection  
7 “construction” shall include construction, reconstruction, or  
8 substantial alteration of a common element whenever the  
9 construction, reconstruction, or alteration does not involve repair or  
10 replacement using substantially the same materials as the original  
11 construction to that existing common or limited common element,  
12 but shall not mean any construction undertaken pursuant to a  
13 governmental or court order. This subsection shall not apply to  
14 construction, or financing in conjunction with that construction,  
15 undertaken by a developer in accordance with the association  
16 documents.

17       b. Except as expressly permitted in this section, an association  
18 shall not collect from its members as part of the customary  
19 association assessment, or pay from association funds, dues or  
20 contributions to any private trade or industry organization  
21 concerning community associations, or make contributions for  
22 charitable or political purposes. An association may collect dues, or  
23 charitable or political contributions if authorized under the bylaws,  
24 but such collections shall be stated separately from the billing for  
25 customary monthly maintenance charges, shall be clearly  
26 designated as voluntary, and if unpaid, may in no case be assessable  
27 or collectible as an unpaid common expense against an owner. A  
28 contribution to any private trade or industry organization through a  
29 property management company or property manager on behalf of an  
30 association is prohibited. An association violating this subsection  
31 shall be subject to sanctions by the Commission on Shared  
32 Ownership Communities, as set forth in P.L. , c. (C. )  
33 (pending before the Legislature as this bill). Any member of a  
34 governing board who knowingly violates this subsection shall be  
35 removed from the governing board by the Commission on Shared  
36 Ownership Communities, and a new election ordered for that  
37 position.

38       c. Regardless of any governing documents to the contrary, an  
39 owner of more than one unit shall not have attributed to him or her  
40 more than 50 percent of all of the votes in the association. This  
41 subsection shall not apply to shared ownership communities  
42 containing less than four dwelling units; provided that this number  
43 may be modified by the Commission on Shared Ownership  
44 Communities pursuant to regulations.

45

46       22. (New section) a. Unless the members of an association  
47 have determined, by a majority vote at a duly called meeting of the  
48 members, to provide no reserves or fewer reserves than required by

1 this subsection, in addition to annual operating expenses, the budget  
2 of an association shall include individual reserve accounts for  
3 capital expenditures and deferred maintenance. These accounts  
4 shall include, but are not limited to, roof replacement, building  
5 painting, and pavement resurfacing, regardless of the amount of  
6 deferred maintenance expense or replacement cost, and for any  
7 other item for which the deferred maintenance expense or  
8 replacement cost exceeds \$10,000. The amount to be reserved shall  
9 be computed by means of a formula which is based upon estimated  
10 remaining useful life and estimated replacement cost or deferred  
11 maintenance expense of each reserve item. The association may  
12 adjust replacement reserve assessments annually to take into  
13 account any changes in estimates or extension of the useful life of a  
14 reserve item caused by deferred maintenance.

15 b. Reserve funds and any interest accruing thereon shall remain  
16 in the individual reserve account or accounts, and shall be used only  
17 for authorized individual reserve expenditures unless their use for  
18 other purposes is approved in advance by a majority vote of all of  
19 the members.

20 c. In a multi-association community, only the voting interests  
21 of the units subject to assessment to fund the reserves in question  
22 shall be eligible to vote on questions that involve waiving or  
23 reducing the funding of reserves, or using existing reserve funds for  
24 purposes other than purposes for which the reserves were intended.

25 d. The budget, account balances, and reserve accounts shall be  
26 disclosed to owners in an annual financial statement, and to  
27 prospective purchasers upon the signing of a contract for sale.  
28 Associations shall have audits performed by a certified public  
29 accountant at least once every three years. The audit reports shall  
30 be filed with the Commission on Shared Ownership Communities,  
31 established pursuant to section 5 of P.L. , c. (C. ) (pending  
32 before the Legislature as this bill). The commission may waive the  
33 requirement for an audit for associations with diminutive annual  
34 expenditures, and in addition may adopt regulations concerning the  
35 frequency and type of audits required.

36

37 23. (New section) a. Unit owners may be subject to reasonable  
38 fines or other sanctions, other than liens therefor, imposed by the  
39 governing board for failure to comply with the bylaws or rules  
40 adopted by the association, which fines or sanctions may be  
41 imposed only subsequent to alternative dispute resolution  
42 proceedings provided in accordance with the association's properly  
43 adopted dispute resolution procedures and compliance with the  
44 informational disclosure requirements of P.L. , c. (C. )  
45 (pending before the Legislature as this bill).

46 b. An owner individually, a group of owners, or the association  
47 may maintain an action for the recovery of damages, or for  
48 injunctive relief, or a combination thereof, for the failure to comply

1 with the rules or bylaws, or the failure to uphold the rules or bylaws  
2 in the case of an association, provided a request has not been filed  
3 with the Commission on Shared Ownership Communities for  
4 alternative dispute resolution services pursuant to  
5 P.L. , c. (C. ) (pending before the Legislature as this bill) by  
6 any party named in the action, and the resolution of that request is  
7 still pending. The prevailing party on the majority of issues  
8 litigated in an action for recovery of damages or injunctive relief,  
9 whether a unit owner or owners, or the association, shall be entitled  
10 to reasonable expenses, including attorneys fees, that may be  
11 incurred by it in connection with such action.

12

13 24. (New section) No lien shall be recorded by an association  
14 for a fine imposed after the effective date of P.L. , c. (C. )  
15 (pending before the Legislature as this bill) without judicial or  
16 administrative review as provided under P.L. , c. (C. )  
17 (pending before the Legislature as this bill). No association shall  
18 impose a fine after the effective date of P.L. , c. (C. )  
19 (pending before the Legislature as this bill), unless such association  
20 shall have offered alternative dispute resolution to the member in  
21 accordance with P.L. , c. (C. ) (pending before the  
22 Legislature as this bill) and shall have provided the information to  
23 the Commission on Shared Ownership Communities as required by  
24 P.L. , c. (C. ) (pending before the Legislature as this bill).

25

26 25. (New section) a. There is created in the Division of  
27 Consumer Affairs of the Department of Law and Public Safety, a  
28 Bureau of Homebuyers Protection. On and after the effective date  
29 of P.L. , c. (C. ) (pending before the Legislature as this  
30 bill), this bureau shall be the State entity responsible for enforcing  
31 the consumer protections afforded purchasers in shared ownership  
32 communities pursuant to "The Planned Real Estate Development  
33 Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.).

34 b. The bureau shall promulgate such rules and regulations as  
35 may be necessary to effectuate "The Planned Real Estate  
36 Development Full Disclosure Act, P.L.1977, c.419 (C.45:22A-21 et  
37 seq.) and any additional regulations which may be necessary to  
38 effectuate the provisions of P.L. , c. (C. ) (pending before  
39 the Legislature as this bill), in accordance with the "Administrative  
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The bureau  
41 may adopt in its entirety or incorporate by reference selected  
42 regulations previously promulgated to effectuate "The Planned Real  
43 Estate Development Full Disclosure Act, P.L.1977, c.419  
44 (C.45:22A-21 et seq.). The bureau shall develop the forms and  
45 procedures for the streamlined submission and expedited review  
46 process required under P.L. , c. (C. ) (pending before the  
47 Legislature as this bill), and adopt regulations therefor, within 120

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

3 c. (1) The bureau shall be headed by an attorney-at-law of the  
4 State of New Jersey.

5 (2) The bureau shall administer the law in a manner that at all  
6 times provides protection to prospective purchasers through clear  
7 and understandable disclosures, of the rights of purchasers and  
8 owners of homes within shared ownership communities in all  
9 phases of the home-buying process.

10

11 26. (New section) a. Notwithstanding any municipal ordinance  
12 to the contrary, a municipality shall not require a developer of a  
13 planned real estate development as that term is defined in section 3  
14 of P.L.1977, c.419 (C.45:22A-23), by ordinance or otherwise, to  
15 form a homeowners' association, if the common elements in the  
16 community will consist solely of unimproved, unencumbered open  
17 space, unless such an association is required to be formed pursuant  
18 to section 1 of P.L.1993, c.30 (C.45:22A-43).

19 b. A municipality shall not require a developer of a planned  
20 real estate development to construct certain of the common  
21 elements prior to the construction of other elements of the  
22 community, common or otherwise; provided, however, that a  
23 municipality may prioritize the construction of roads or require  
24 such other contributions as allowed pursuant to the "Municipal  
25 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

26

27 27. Section 3 of P.L.1989, c.9 (C.2A:62A-14) is amended to  
28 read as follows:

29 3. a. No bylaws shall be amended in accordance with section 2  
30 of **【this act】** P.L.1989, c.9 unless the amendment is approved by the  
31 owners of at least two-thirds of the units held by unit owners other  
32 than the developer in the qualified common interest community.

33 b. **【Bylaws】** Certain bylaw provisions which limit the liability  
34 of an association in any civil action brought by or on behalf of a  
35 unit owner to respond in damages as a result of bodily injury to the  
36 unit owner occurring on the premises of the qualified common  
37 interest community which were adopted in accordance with section  
38 2 of 【this act】 P.L.1989, c.9 shall apply to actions for injuries  
39 sustained on or after the operative date of the bylaws and shall  
40 expire on the 91st day next following enactment of P.L. ,  
41 c. (C. ) (pending before the Legislature as this bill);  
42 provided, however, that such bylaws may readopted and approved  
43 by two-thirds of the current members of the association other than  
44 the developer. Any such bylaws readopted shall expire annually  
45 unless readopted and approved annually by at least two-thirds of  
46 members of the association eligible to vote.

47 (cf: P.L.1989, c.9, s.3)

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

3       1. For the purposes of this act:

4       a. "Condominium" means the form of real property ownership  
5 provided for under the "Condominium Act," P.L.1969, c.257  
6 (C.46:8B-1 et seq.);

7       b. "Cooperative" means a housing corporation or association  
8 wherein the holder of a share or membership interest in the  
9 corporation or association is entitled to possess and occupy, for  
10 dwelling purposes, a house, apartment, or other unit of housing  
11 owned by the corporation or association, or to purchase a unit of  
12 housing constructed or erected by the corporation or association;

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

16       d. "Horizontal property regime" means the form of real  
17 property ownership provided for under the "Horizontal Property  
18 Act," P.L.1963, c.168 (C.46:8A-1 et seq.);

19       e. "Qualified private community" means a residential  
20 condominium, cooperative, fee simple community, **[or]** horizontal  
21 property regime, or a shared ownership community, provided that  
22 no community shall be deemed a qualified private community if its  
23 association has not registered with the Commission on Shared  
24 Ownership Communities as required pursuant to  
25 P.L. , c. (C. ) (pending before the Legislature as this bill),  
26 the residents of which do not receive any tax abatement or tax  
27 exemption related to its construction, comprised of a community  
28 trust or other trust device, condominium association, homeowners'  
29 association, or council of co owners, wherein the cost of  
30 maintaining roads and streets and providing essential services is  
31 paid for by a not-for-profit entity consisting exclusively of unit  
32 owners within the community. No apartment building or garden  
33 apartment complex owned by an individual or entity that receives  
34 monthly rental payments from tenants who occupy the premises  
35 shall be considered a qualified private community. No "proprietary  
36 campground facility," as defined in section 1 of P.L.1993, c.258  
37 (C.45:22A-49), shall be considered to be a qualified private  
38 community.

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

40

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

43       3. As used in this act unless the context clearly indicates  
44 otherwise:

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

- 1       b. "Developer" or "subdivider" means any person who disposes  
2 or offers to dispose of any lot, parcel, unit, or interest in a planned  
3 real estate development.
- 4       c. "Offer" means any inducement, solicitation, advertisement,  
5 or attempt to encourage a person to acquire a unit, parcel, lot, or  
6 interest in a planned real estate development.
- 7       d. "Purchaser" or "owner" means any person or persons who  
8 acquires a legal or equitable interest in a unit, lot, or parcel in a  
9 planned real estate development, and shall be deemed to include a  
10 prospective purchaser or owner.
- 11       e. "State" means the State of New Jersey.
- 12       f. "Commissioner" means the Commissioner of Community  
13 Affairs, except that after the effective date of P.L. , c. (C. )  
14 all references to the commissioner shall mean the Chief of the  
15 Bureau of Homebuyers Protection established pursuant to that act.
- 16       g. "Person" shall be defined as in R.S.1:1-2.
- 17       h. "Planned real estate development" or "development" means  
18 any real property situated within the State, whether contiguous or  
19 not, which consists of or will consist of, separately owned areas,  
20 irrespective of form, be it lots, parcels, units, or interest, and which  
21 are offered or disposed of pursuant to a common promotional plan,  
22 and providing for common or shared elements or interests in real  
23 property. This definition shall not apply to any form of  
24 timesharing.
- 25       This definition shall specifically include, but shall not be limited  
26 to, property subject to the "Condominium Act," P.L.1969, c.257  
27 (C.46:8B-1 et seq.), any form of homeowners' association, any  
28 housing cooperative or to any community trust or other trust device.
- 29       This definition shall be construed liberally to effectuate the  
30 purposes of this act.
- 31       i. "Common promotional plan" means any offer for the  
32 disposition of lots, parcels, units or interests of real property by a  
33 single person or group of persons acting in concert, where such lots,  
34 parcels, units or interests are contiguous, or are known, designated  
35 or advertised as a common entity or by a common name.
- 36       j. "Advertising" means and includes the publication or causing  
37 to be published of any information offering for disposition or for  
38 the purpose of causing or inducing any other person to purchase an  
39 interest in a planned real estate development, including the land  
40 sales contract to be used and any photographs or drawings or artist's  
41 representations of physical conditions or facilities on the property  
42 existing or to exist by means of any:
- 43       (1) Newspaper or periodical;  
44       (2) Radio or television broadcast;  
45       (3) Written or printed or photographic matter;  
46       (4) Billboards or signs;  
47       (5) Display of model houses or units;

1 (6) Material used in connection with the disposition or offer of  
2 the development by radio, television, telephone or any other  
3 electronic means; or

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

8 "Advertising" does not mean and shall not be deemed to include:  
9 Stockholder communications such as annual reports and interim  
10 financial reports, proxy materials, registration statements, securities  
11 prospectuses, applications for listing securities on stock exchanges,  
12 and the like; all communications addressed to and relating to the  
13 account of any person who has previously executed a contract for  
14 the purchase of the subdivider's lands except when directed to the  
15 sale of additional lands.

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

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

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

31 n. "Association" means an association for the management of  
32 common elements and facilities **],** organized pursuant to section 1  
33 of P.L.1993, c.30 (C.45:22A-43) **]** in a community containing such  
34 common elements and facilities.

35 o. "Executive board" or governing board means the  
36 **[**executive] board elected by the members of an association, **[**as  
37 provided for] in accordance with [section] sections 3 and 5 of  
38 P.L.1993, c.30 (C.45:22A-45) and (C.45:22A-47) and  
39 P.L. , c. (C. ) (pending before the Legislature as this bill).

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

43 q. "Chief" means the Chief of the Bureau of Homebuyers  
44 Protection in the Department of Law and Public Safety, established  
45 pursuant to section 25 of P.L. , c. (C. ) (pending before  
46 the Legislature as this bill).

47 (cf: P.L.2006, c.63, s.39)

1 30. Section 4 of P.L.1977, c.419 (C.45:22A-24) is amended to  
2 read as follows:

3 4. **【This act】** On and after the effective date of P.L. \_\_\_\_\_,  
4 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill), P.L.1977,  
5 c.419 shall be administered by the 【Division of Housing and  
6 Development in the State Department of Community Affairs】  
7 Bureau of Homebuyers Protection in the Division of Consumer  
8 Affairs in the Department of Law and Public Safety, established  
9 pursuant to section 25 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before  
10 the Legislature as this bill), hereinafter referred to as the "agency."  
11 (cf: P.L.1993, c.258, s.9)

12  
13 31. Section 5 of P.L.1977, c.419 (C.45:22A-25) is amended to  
14 read as follows:

15 5. a. Unless the method of disposition is adopted for purposes  
16 of evasion, the provision of this act shall not apply to offers or  
17 dispositions:

18 (1) By an owner for his own account in a single or isolated  
19 transaction;

20 (2) Wholly for industrial, commercial, or other nonresidential  
21 purposes;

22 (3) Pursuant to court order;

23 (4) By the United States, by this State or any of its agencies or  
24 political subdivisions;

25 (5) Of real property located without the State;

26 (6) Of cemetery lots or interests;

27 (7) **【Of less than 100 lots, parcels, units or interests; provided,**  
28 **however, that with respect to condominiums and cooperatives, this**  
29 **exemption shall not apply, irrespective of the number of lots,**  
30 **parcels, units, or interests offered or disposed of】** (Deleted by  
31 amendment, P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) pending before the Legislature  
32 as this bill);

33 (8) **【Of developments where the common elements or interests,**  
34 **which would otherwise subject the offering to this act, are limited to**  
35 **the provision of unimproved, unencumbered open space】** (Deleted  
36 by amendment, P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before the  
37 Legislature as this bill);

38 (9) In a development composed wholly of rental units, where the  
39 relationship created is one of landlord and tenant;

40 (10) Of any form of timesharing.

41 b. The agency may from time to time, pursuant to its rules and  
42 regulations, exempt from **【any of the provisions】** the registration  
43 fees, in part, or from certain detailed disclosure requirements of  
44 **【this act】** P.L.1977, c.419, any development, or any lots, units,  
45 parcels, or interests in a development, if it finds that the  
46 enforcement of 【this act】 P.L.1977, c.419 to such 【, is not  
47 necessary in the public interest or required for the protection of



1 purchasers by reason of the small amount of the purchase price  
2 involved, **]** will not be impacted by such reduced fees or streamlined  
3 reporting requirements. No registration fees shall be charged in  
4 connection with units reserved for occupancy by low or moderate  
5 income households. Reduced registration fees may be permitted  
6 when the limited character of the offering, or the limited nature of  
7 the common or shared elements weighs in favor of such fee  
8 reduction.

9 (cf: P.L.2006, c.63, s.40)

10

11 32. Section 6 of P.L.1977, c.419 (C.45:22A-26) is amended to  
12 read as follows:

13 6. a. Unless otherwise exempted:

14 (1) No developer may offer or dispose of any interest in a  
15 planned real estate development, prior to the registration of such  
16 development with the agency.

17 (2) No developer may dispose of any lot, parcel, unit, or interest  
18 in a planned real estate development, unless he: delivers to the  
19 purchaser a current public offering statement, on or before the date  
20 the contract [date of such disposition] is signed.

21 b. Any contract or agreement for the purchase of any parcel,  
22 lot, unit, or interest in a planned real estate development may be  
23 canceled without cause by the purchaser by sending or delivering  
24 written notice of cancellation by midnight of the seventh calendar  
25 day following the day on which the purchaser has executed such  
26 contract or agreement. Every such contract or agreement shall  
27 contain, in writing, the following notice in 10-point bold type or  
28 larger, directly above the space provided for the signature of the  
29 purchaser:

30 "NOTICE TO THE PURCHASER: you have the right to cancel  
31 this contract by sending or delivering written notice of cancellation  
32 to the developer by midnight of the seventh calendar day following  
33 the day on which it was executed. Such cancellation is without  
34 penalty, and any deposit made by you shall be promptly refunded in  
35 its entirety."

36 c. Notice as required in subsection b. shall, in addition to all  
37 other requirements, be conspicuously located and simply stated in  
38 the public offering statement.

39 d. The developer shall make copies of the public offering  
40 statement freely available to prospective purchasers prior to the  
41 contract date of disposition.

42 (cf: P.L.1977, c.419, s6)

43

44 33. Section 7 of P.L.1977, c.419 (C.45:22A-27) is amended to  
45 read as follows:

46 7. a. The application for registration of the development shall  
47 be filed as prescribed by the agency's rules and shall contain the  
48 following documents and information:

- 1 (1) An irrevocable appointment of the agency to receive service  
2 of any lawful process in any noncriminal proceeding arising under  
3 this act against the developer or his agents;
- 4 (2) The states or other jurisdictions, including the federal  
5 government, in which an application for registration or similar  
6 documents have been filed, and any adverse order, judgment or  
7 decree entered in connection with the development by the  
8 regulatory authorities in each jurisdiction or by any court;
- 9 (3) The name, address, and principal occupation for the past five  
10 years of every officer of the applicant or person occupying a similar  
11 status, or performing similar management functions; the extent and  
12 nature of his interest in the applicant or the development as of a  
13 specified date within 30 days of the filing of the application;
- 14 (4) Copies of its articles of incorporation, with all amendments  
15 thereto, if the developer is a corporation; copies of all instruments  
16 by which the trust is created or declared, if the developer is a trust;  
17 copies of its articles of partnership or association and all other  
18 papers pertaining to its organization, if the developer is a  
19 partnership, unincorporated association, joint stock company, or  
20 any other form of organization; and if the purported holder of legal  
21 title is a person other than the developer, copies of the above  
22 documents from such person;
- 23 (5) A legal description of the lands offered for registration,  
24 together with a map showing the subdivision proposed or made, and  
25 the dimensions of the lots, parcels, units, or interests, as available,  
26 and the relation of such lands to existing streets, roads, and other  
27 improvements;
- 28 (6) Copies of the deed or other instrument establishing title to  
29 the subdivision in the developer, and a statement in a form  
30 acceptable to the agency of the condition of the title to the land  
31 comprising the development, including encumbrances as of a  
32 specified date within 30 days of the date of application by a title  
33 opinion of a licensed attorney, or by other evidence of title  
34 acceptable to the agency;
- 35 (7) Copies of the instrument which will be delivered to a  
36 purchaser to evidence his interest in the development, and of the  
37 contracts and other agreements which a purchaser will be required  
38 to agree to or sign;
- 39 (8) Copies of any management agreements, service contracts, or  
40 other contracts or agreements affecting the use, maintenance or  
41 access of all or a part of the development;
- 42 (9) A statement of the zoning and other government regulations  
43 affecting the use of the development including the site plans and  
44 building permits and their status, and also of any existing tax and  
45 existing or proposed special taxes or assessments which affect the  
46 development; and a statement of the existing use of adjoining lands;
- 47 (10) A statement that the lots, parcels, units or interests in the  
48 development will be offered to the public, and that responses to

1 applications will be made without regard to marital status, sex, race,  
2 creed, or national origin;

3 (11) A statement of the present condition of access to the  
4 development, the existence of any unusual conditions relating to  
5 noise or safety, which affect the development and are known to the  
6 developer, the availability of sewage disposal facilities and other  
7 public utilities including water, electricity, gas, and telephone  
8 facilities in the development to nearby municipalities, and the  
9 nature of any improvements to be installed by the developer and his  
10 estimated schedule for completion;

11 (12) In the case of any conversion an engineering survey shall  
12 be required, which shall include mechanical, structural, electrical  
13 and engineering reports to disclose the condition of the building;

14 (13) In the case of any development or portion thereof against  
15 which there exists a blanket encumbrance, a statement of the  
16 consequences for an individual purchaser of a failure, by the person  
17 or persons bound, to fulfill obligations under the instrument or  
18 instruments creating such encumbrances and the steps, if any, taken  
19 to protect the purchaser in such eventuality;

20 (14) A narrative description of the promotional plan for the  
21 disposition of the lots, parcels, units or interests in the development,  
22 together with copies of all advertising material which has been  
23 prepared for public distribution, and an indication of their means of  
24 communication;

25 (15) The proposed public offering statement;

26 (16) A current financial statement, which shall include such  
27 information concerning the developer as the agency deems to be  
28 pertinent, including but not limited to, a profit and loss statement  
29 certified by an independent public accountant and information  
30 concerning any adjudication of bankruptcy during the last five years  
31 against the developer, or any principal owning more than 10% of  
32 the interest in the development at the time of filing, provided,  
33 however, that this shall not extend to limited partners, or others  
34 whose interests are solely those of investors;

35 (17) Copies of instruments creating easements or other  
36 restrictions;

37 (18) A statement of the status of compliance with the  
38 requirements of all laws, ordinances, regulations, and other  
39 requirements of governmental agencies having jurisdiction over the  
40 premises;

41 (19) Such other information, documentation, or certification as  
42 the agency deems necessary in furtherance of the protective  
43 purposes of this act.

44 b. The information contained in any application for registration  
45 and copies thereof, shall be made available to interested parties at a  
46 reasonable charge and under such regulations as the agency may  
47 prescribe.

1 c. A developer may register additional property pursuant to the  
2 same common promotional plan as those previously registered by  
3 submitting another application, providing such additional  
4 information as may be necessary to register the additional lots,  
5 parcels, units or interests, which shall be known as a consolidated  
6 filing.

7 d. The developer shall immediately report any material changes  
8 in the information contained in an application for registration. The  
9 term "material changes" shall be further defined by the agency in its  
10 regulations.

11 e. The application shall be accompanied by a fee in an amount  
12 equal to **【\$500.00 plus \$35.00 per lot, parcel, unit, or interest**  
13 **contained in the application, which fees may be used by the agency**  
14 **to partially defray the cost of rendering services under the act. If**  
15 **the fees are insufficient to defray the cost of rendering services**  
16 **under P.L.1977, c.419 (C.45:22A-21 et seq.), the agency shall, by**  
17 **regulation, establish a revised fee schedule. The revised fee**  
18 **schedule shall assure that the fees collected reasonably cover but do**  
19 **not exceed the expenses and administration of implementing**  
20 **P.L.1977, c.419 (C.45:22A-21 et seq.)】** : the value of each dwelling  
21 unit proposed to be built as that value will be stated for the purposes  
22 of the New Home Warranty Program, or the proposed sales price of  
23 that dwelling unit if the warranty value is undeterminable,  
24 multiplied by three hundredths of one percent (.0003). All fees  
25 collected by the agency shall be forwarded to the State Treasurer  
26 and thereafter maintained in a separate, non-lapsing account, to be  
27 used solely for the purposes of defraying the State costs of  
28 rendering services and protections to homebuyers and homeowners  
29 in shared ownership communities, as required to be provided under  
30 P.L. , c. (C. ) (pending before the Legislature as this bill),  
31 and "The Planned Real Estate Development Full Disclosure Act,"  
32 P.L.1977, c.419 (C.45:22A-21 et seq.), including the supplement to  
33 that act, P.L.1993, c.30 (C.45:22A-43 et seq.). The Bureau of  
34 Homebuyers Protection in the Division of Consumer Affairs of the  
35 Department of Law and Public Safety and the Commission on  
36 Shared Ownership Communities shall be authorized to be  
37 reimbursed from the account required to be established pursuant to  
38 this section by the State Treasurer.

39 If the agency determines, upon a review that shall be undertaken  
40 upon the cessation of developer control of the association pursuant  
41 to section 5 of P.L.1993, c.30 (C.45:22A-47), that the estimated  
42 average sales price per housing unit used to calculate the fees varied  
43 by more than one percent from the actual average sales price of all  
44 housing units, the agency shall collect from or remit to the  
45 developer the difference between the two calculations.

46 f. (1) An engineering study required pursuant to paragraph  
47 (12) of subsection a. of this section shall be conducted, and the  
48 results thereof certified, by a person licensed in this State as a

1 professional engineer pursuant to P.L.1938, c.342 (C.45:8-27 et  
2 seq.).

3 (2) The engineer who prepares the survey shall certify to the  
4 agency whether, in his judgment, the building is in compliance with  
5 the code standards adopted under the "Hotel and Multiple Dwelling  
6 Law," P.L.1967, c.76 (C.55:13A-1 et seq.) and the "Uniform Fire  
7 Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.) and shall list  
8 all outstanding violations then existing in accordance with his  
9 observation and judgment. The engineer shall be immune from tort  
10 liability with regard to such certification and list in the same  
11 manner and to the same extent as if he were a public employee  
12 protected by the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

13 (3) If the agency finds there is a significant discrepancy between  
14 the engineering survey submitted by the applicant and an  
15 engineering survey submitted by any tenant or tenants currently  
16 residing in the building, the agency shall investigate the matter in  
17 order to determine the true state of facts prior to approving the  
18 application. The agency may use its own staff or contract with  
19 independent professionals, and may conduct hearings in accordance  
20 with the "Administrative Procedure Act," P.L.1968, c.410  
21 (C.52:14B-1 et seq.). Any cost to the agency of hiring independent  
22 professionals shall be borne by the applicant developer at the  
23 discretion of the agency.

24 (cf: P.L.1991, c.509, s.21)

25

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

28 8. a. A public offering statement shall disclose fully and  
29 accurately the characteristics of the development, the nature and  
30 extent of shared property ownership interests and obligations for  
31 those interests, and the lots, parcels, units, or interests therein  
32 offered, and shall make known to prospective purchasers all unusual  
33 or material circumstances or features affecting the development.  
34 The proposed public offering statement submitted to the agency  
35 shall be in a form prescribed by its rules and regulations and shall  
36 include the following:

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

38 (2) A general narrative description of the development stating  
39 the total number of lots, units, parcels, or interests in the offering,  
40 and the total number of such interests planned to be sold, leased or  
41 otherwise transferred;

42 (3) Copies of any management contract, lease of recreational  
43 areas, or similar contract or agreement affecting the use,  
44 maintenance, or access of all or any part of the development, with a  
45 brief and simple narrative statement of the effect of each such  
46 agreement upon a purchaser, and a statement of the relationship, if  
47 any, between the developer and the managing agent or firm;

- 1 (4) (a) The significant terms of any encumbrances, easements,  
2 liens, and restrictions, including zoning and other regulations,  
3 affecting such lands and each unit, lot, parcel, or interest, and a  
4 statement of all existing taxes and existing or proposed special taxes  
5 or assessments which affect such lands; and
- 6 (b) In the case of a conversion subject to the provisions of the  
7 "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et  
8 al.), the information required pursuant to section 14 of P.L.1991,  
9 c.509 (C.2A:18-61.53);
- 10 (5) (a) Relevant community information, including hospitals,  
11 health and recreational facilities of any kind, streets, water supply,  
12 levees, drainage control systems, irrigation systems, sewage  
13 disposal facilities and customary utilities; and
- 14 (b) The estimated cost, size, date of completion, and  
15 responsibility for construction and maintenance of existing and  
16 proposed amenities which are referred to in connection with the  
17 offering or disposition of any interest in the subdivision or  
18 subdivided lands;
- 19 (6) A copy of the proposed budget for the operation and  
20 maintenance of the common or shared elements or interests;
- 21 (7) Additional information required by the agency to assure full  
22 and fair disclosure to prospective purchasers.
- 23 b. The public offering statement shall not be used for any  
24 promotional purposes before registration of the development and  
25 afterwards only if it is used in its entirety. No person may advertise  
26 or represent that the agency approves or recommends the  
27 development or dispositions therein. No portion of the public  
28 offering statement may be underscored, italicized, or printed in  
29 larger or heavier or different color type than the remainder of the  
30 statement, unless the agency requires or permits it.
- 31 c. The agency may require the developer to alter or amend the  
32 proposed public offering statement in order to assure full and fair  
33 disclosure to prospective purchasers, and no change in the  
34 substance of the promotional plan or plan of disposition or  
35 development of a planned real estate development may be made  
36 after registration without the approval of the agency. A public  
37 offering statement shall not be current unless all amendments have  
38 been incorporated.
- 39 d. The public offering statement shall, to the extent possible,  
40 combine simplicity and accuracy of information, in order to  
41 facilitate purchaser understanding of the totality of rights,  
42 privileges, obligations and restrictions, comprehended under the  
43 proposed plan of development. In reviewing such public offering  
44 statement, the agency shall pay close attention to the requirements  
45 of this subsection, and shall use its discretion to require revision of  
46 a public offering statement which is unnecessarily complex,  
47 confusing, or is illegible by reason of type size or otherwise.

1 e. On or after the effective date of P.L. , c. (C. )  
2 (pending before the Legislature as this bill), the agency shall review  
3 its processes for submission of the public offering statement, and  
4 shall develop a streamlined process for form submission and  
5 expedited review, in accordance with the purposes of  
6 P.L. , c. (C. ) (pending before the Legislature as this bill).  
7 The process shall rely on electronic media submission to the extent  
8 practicable, which submission shall have text-searchable properties,  
9 and be in a format deemed acceptable by the agency. Salient  
10 information shall be indexed, and an executive summary of the  
11 salient information contained in the public offering statement, in  
12 plain language, shall be placed at the front of the document,  
13 including a summary of the rights, liabilities, obligations, and  
14 governing form applicable to the association.  
15 (cf: P.L.1991, c.509, s.22)

16  
17 35. Section 10 of P.L.1977, c.419 (C.45:22A-30) is amended to  
18 read as follows:

19 10. a. Upon receipt of the application for registration in proper  
20 form, and accompanied by proper fee, the agency shall, within 10  
21 business days, issue a notice of filing to the applicant. Within **[90]**  
22 45 days from the date of the notice of filing, the agency shall enter  
23 an order registering the development or rejecting the registration,  
24 provided that the expedited method of submission has been initiated  
25 by the agency and complied with in all aspects by the developer;  
26 otherwise the agency shall enter an order registering the  
27 development or rejecting the registration within 90 days. If no  
28 order of rejection is entered within 45 or 90 days, respectively, from  
29 the date of notice of filing, the development shall be deemed  
30 registered unless the applicant has consented in writing to a delay.

31 b. If the agency affirmatively determines that the requirements  
32 of section 9 of **[this act]** P.L.1977, c.419 (C.45:22A-29) have been  
33 met, it shall enter an order registering the development.

34 c. If the agency determines upon inquiry and examination that  
35 any of the requirements of section 9 of **[this act]** P.L.1977, c.419  
36 (C.45:22A-29) have not been met, the agency shall notify the  
37 applicant that the application for registration must be corrected in  
38 such particulars, within 30 days, as designated by the agency. If the  
39 requirements are not met within the time allowed, the agency may  
40 enter an order rejecting the registration which shall include the  
41 findings of fact upon which the order is based. The order rejecting  
42 the registration shall not become effective until 20 days after the  
43 lapse of the aforesaid specified period during which 20-day period  
44 the applicant may petition for reconsideration and shall be entitled  
45 to a hearing. Such order of rejection shall not take effect, in any  
46 event, until such time as the hearing, once requested, has been given  
47 to the applicant.

48 (cf: P.L.1977, c.419, s.10)

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

3 1. **【A】** Unless exempted as provided in this section, a  
4 developer of a planned development, whether or not subject to the  
5 registration requirements of section 6 of P.L.1977, c.419  
6 (C.45:22A-26), shall organize or cause to be organized an  
7 association whose obligation it shall be to manage the common  
8 elements and facilities. The developer may be exempted from  
9 forming an association upon a determination by the agency that  
10 there will be no expenses in connection with maintenance of any of  
11 the proposed common property in the community, and all such  
12 common property consists solely of unimproved and unencumbered  
13 open space. The association shall be formed on or before the filing  
14 of the master deed or declaration of covenants and restrictions, and  
15 may be formed as a for-profit corporation only if the development  
16 will be a cooperative housing corporation issuing shares, or a  
17 nonprofit corporation **【**, unincorporated association, or any other  
18 form permitted by law **】** if a condominium or planned development.  
19 (cf: P.L.1993, c.30, s.1)  
20

21 37. Section 2 of P.L.1993, c.30 (C.45:22A-44) is amended to  
22 read as follows:

23 2. a. Subject to the master deed, declaration of covenants and  
24 restrictions or other instruments of creation, **【the】** an association as  
25 that term is defined under section 3 of P.L. , c. (C. )  
26 (pending before the Legislature as this bill), may do all that it is  
27 legally entitled to do under the laws applicable to its form of  
28 organization. In addition, an association of a shared ownership  
29 community shall have the identical powers and obligations to those  
30 as set forth in section 15 of P.L.1969, c.257 (C.46:8B-15) for  
31 condominium associations.

32 b. **【The】** An association shall exercise its powers and discharge  
33 its functions in a manner that protects and furthers the health, safety  
34 and general welfare of the residents of the community. The actions  
35 of an association concerning governance of its members shall  
36 embody standards of due process, open governance, democracy, and  
37 fundamental fairness, similar to those to which governmental bodies  
38 are held, in all areas of governance, including, but not limited to  
39 elections, access to records, open meetings, and alternate dispute  
40 resolution, and shall be judged under these standards.

41 Actions of associations in matters not concerning governance  
42 over its members shall be subject to the business judgment rule, but  
43 implemented in a manner that protects and furthers the health,  
44 safety and general welfare of the residents of the community.

45 c. **【The】** An association shall provide a fair and efficient  
46 procedure for the resolution of disputes between individual unit  
47 owners and the association, and between unit owners, which shall  
48 be readily available as an alternative to litigation. Any costs of any



1 procedure provided shall be borne as a common expense by all of  
2 the members of the association, and not assessed against any  
3 individual owner or owners.

4 d. The association may assert tort claims concerning the  
5 common elements and facilities of the development as if the claims  
6 were asserted directly by the unit owners individually.  
7 (cf: P.L.1993, c.30, s.2)

8  
9 38. Section 3 of P.L.1993, c.30 (C.45:22A-45) is amended to  
10 read as follows:

11 3. a. **【The form of administration of an】** An association  
12 **【organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43)】**  
13 as defined pursuant to section 3 of P.L. , c. (C. ) (pending  
14 before the Legislature as this bill) shall provide for the election of  
15 **【an executive】** a governing board, elected by and responsible to the  
16 members of the association pursuant to section 4 of P.L.1993, c.30  
17 (C.45:22A-46), through which the powers of the association shall  
18 be exercised and its functions performed. All members of the  
19 association shall be permitted to be nominated for and run for  
20 elected positions on the governing board. Elections shall be held at  
21 least every two years, and shall be conducted with strict adherence  
22 to democratic principles and fairness. If an association has had no  
23 election which complies with the provisions of this section before  
24 the effective date of P.L. , c. (C. ) (pending before the  
25 Legislature as this bill), other than the initial election required  
26 pursuant to section 5 of P.L.1993. c.30 (C.45:22A-47), then an  
27 election shall be held, to be monitored by the Commission on  
28 Shared Ownership Communities, and in accordance with  
29 regulations to be promulgated under P.L. , c. (C. ) (pending  
30 before the Legislature as this bill).

31 b. Subject to the master deed, declaration of covenants and  
32 restrictions, bylaws or other instruments of creation, subsection d.  
33 of this section, and the laws of the State, **【the executive】** a  
34 governing board may act in all instances on behalf of the  
35 association.

36 c. The members of **【the executive】** a governing board  
37 appointed by the developer shall be liable as fiduciaries to the  
38 owners for their acts or omissions.

39 d. During control of **【the executive】** a governing board by the  
40 developer, copies of the annual audit of association funds shall be  
41 available for inspection by owners or their authorized representative  
42 at the project site.

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

44

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

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

4 a. A requirement that all meetings of the **【executive】**  
5 governing board **【**, except conference or working sessions at which  
6 no binding votes are to be taken,**】** shall be open to attendance by all  
7 unit owners, and adequate notice of any such meeting shall be given  
8 to all unit owners in such manner as the bylaws shall prescribe;  
9 except that the **【executive】** governing board may exclude or restrict  
10 attendance at those meetings, or portions of meetings, dealing with  
11 (1) any matter the disclosure of which would constitute an  
12 unwarranted invasion of individual privacy; (2) any pending or  
13 anticipated litigation or contract negotiations; (3) any matters  
14 falling within the attorney-client privilege, to the extent that  
15 confidentiality is required in order for the attorney to exercise his  
16 ethical duties as a lawyer, or (4) any matter involving the  
17 employment, promotion, discipline or dismissal of a specific officer  
18 or employee of the association. At each meeting required under this  
19 subsection to be open to all unit owners, the participation of unit  
20 owners in the proceedings or the provision of a public comment  
21 session shall be **【at the discretion of the executive board】**  
22 permitted, but may be limited in duration in accordance with  
23 regulations which may be promulgated by the Commission on  
24 Shared Ownership Communities, minutes of the proceedings shall  
25 be taken, and copies of those minutes shall be made available to all  
26 unit owners before the next open meeting, or within 60 days,  
27 whichever is sooner, or shall be in accordance with any regulations  
28 promulgated by the Commission on Shared Ownership  
29 Communities.

30 b. The method of calling meetings of unit owners, the  
31 percentage of unit owners or voting rights required to make  
32 decisions and to constitute a quorum. The bylaws may,  
33 nevertheless, provide that unit owners may waive notice of  
34 meetings or may act by written agreement without meetings.

35 c. The manner of collecting from unit owners their respective  
36 shares of common expenses and the method of distribution to the  
37 unit owners of their respective shares of common surplus or such  
38 other application of common surplus as may be duly authorized by  
39 the bylaws.

40 d. The method by which the bylaws may be amended, provided  
41 that no amendment shall be effective until recorded in the same  
42 office as the then existing bylaws. The bylaws may also provide a  
43 method for the adoption, amendment and enforcement of reasonable  
44 administrative rules and regulations relating to the operation, use,  
45 maintenance and enjoyment of the units and of the common  
46 elements, including limited common elements.

47 Notwithstanding any provision of P.L.1993, c.30 (C.45:22A-43  
48 et seq.) to the contrary, all bylaws and association documents of an

1 association shall comply with the minimum requirements of  
2 sections 16 and 18 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the  
3 Legislature as this bill) for such documents, or shall be deemed to  
4 include such provisions by incorporation through this section.  
5 (cf: P.L.1993, c.30, s.4)

6  
7 40. Section 5 of P.L.1993, c.30 (C.45:22A-47) is amended to  
8 read as follows:

9 5. a. Upon the sale of 20 percent of the lots, parcels, units or  
10 interests to be created in the community, the developer shall arrange  
11 for the members of the association to hold an election for an  
12 owners' coordinating council, which group shall be comprised of at  
13 least three owners other than the developer. The council shall be a  
14 steering committee for owners' complaints and to provide guidance  
15 to the developer and association on issues of importance to the  
16 owners. In addition, the council shall coordinate the elections to the  
17 association governing board when owners may be elected to that  
18 board in accordance with this section, and shall serve as the owners'  
19 finance committee during the period of developer control. All  
20 elections to this group shall comply with election guidelines to be  
21 promulgated by the Commission on Shared Ownership  
22 Communities established pursuant to section 5 of P.L. \_\_\_\_\_,  
23 c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill), provided  
24 that only members elected by the unit owners, other than the  
25 developer or developer's appointees to the governing board, shall  
26 serve on the council, and the council's decisions shall be free of any  
27 control by the developer or any member of the governing board  
28 appointed by the developer. Any vacancies on the council shall be  
29 filled within 30 days by current council members, and in the case of  
30 any tie votes by such council members, by the vote of the unit  
31 owners other than the developer within 60 days after the vacancy  
32 occurs.

33 Irrespective of the time set for developer control of the  
34 association provided in the master deed, declaration of covenants  
35 and restrictions, or other instruments of creation, control of the  
36 voting interests of the governing board of the association shall be  
37 surrendered to the owners in the following manner:

38 (1) Sixty days after conveyance of 25 percent of the lots,  
39 parcels, units or interests, not fewer than 25 percent of the members  
40 of the **[executive]** governing board shall be elected by the owners,  
41 in accordance with election procedures to be promulgated by the  
42 Commission on Shared Ownership Communities.

43 (2) Sixty days after conveyance of 50 percent of the lots,  
44 parcels, units or interests, not fewer than 40 percent of the members  
45 of the **[executive]** governing board shall be elected by the owners.

46 (3) Sixty days after conveyance of 75 percent of the lots,  
47 parcels, units or interests, the developer's control of the **[executive]**  
48 governing board shall terminate, at which time the owners shall

1 elect the entire **【executive】** governing board; except that the  
2 developer may retain the selection of one **【executive】** governing  
3 board member representing his interests as a unit owner so long as  
4 there are any units remaining unsold in the regular course of  
5 business. The retention by the developer of one member on the  
6 governing board shall cease if no units remain which are being  
7 offered for sale to the public. Unsold units converted to rental units  
8 by a developer shall create a presumption that the developer has  
9 ceased selling, and in that event, any tenant of a developer-owned  
10 unit shall be deemed to be a member of the association as if the  
11 tenant owns the unit.

12 b. The percentages specified in subsection a. of this section  
13 shall be calculated upon the basis of the whole number of units  
14 entitled to membership in the association. The bylaws of the  
15 association shall specify the number or proportion of votes of all  
16 units conveyed to owners that shall be required for the election of  
17 board members. Unless the bylaws provide otherwise, each unit  
18 conveyed to an owner shall be entitled to one vote. A developer  
19 may surrender control of the executive board of the association  
20 before the time specified in subsection a. of this section, if the  
21 owners agree by a majority vote to assume control.

22 c. Upon assumption by the owners of control of the  
23 **【executive】** voting interests of the governing board of the  
24 association, the developer shall forthwith deliver to the association  
25 all items and documents pertinent to the association, such as, but  
26 not limited to, a copy of the master deed, declaration of covenants  
27 and restrictions, documents of creation of the association, bylaws,  
28 minute book including all minutes, any rules and regulations,  
29 association funds and an accounting therefor, all personal property,  
30 insurance policies, government permits, a membership roster and all  
31 contracts and agreements relative to the association. In addition, all  
32 similar items required to be turned over by a developer of a  
33 condominium pursuant to section 2 of P.L.1979, c.157 (C.46:8B-  
34 12.1) shall be required to be turned over by a developer of a shared  
35 ownership community to the association.

36 d. The association when controlled by the owners shall not take  
37 any action that would be detrimental to the sale of units by the  
38 developer, and shall continue the same level of maintenance,  
39 operation and services as immediately prior to their assumption of  
40 control, until the last unit is sold.

41 e. From the time of conveyance of 75 percent of the lots,  
42 parcels, units, or interests, until the last lot, parcel, unit, or interest  
43 in the development is conveyed in the ordinary course of business,  
44 the master deed, bylaws or declaration of covenants and restrictions  
45 shall not require that more than 75 percent of the votes entitled to  
46 be cast thereon be cast in the affirmative for a change in the bylaws  
47 or regulations of the association.

1 f. The developer shall not be permitted to cast any votes  
2 allocated to unsold lots, parcels, units, or interests, in order to  
3 amend the master deed, bylaws, or any other document, for the  
4 purpose of changing the permitted use of a lot, parcel, unit, or  
5 interest, or for the purpose of reducing the common elements or  
6 facilities.

7 g. If the council of owners authorized in subsection a. of this  
8 section is established and there has been substantial completion of  
9 the common elements and public improvements in any phase of the  
10 shared ownership community which are not covered by the  
11 performance or maintenance guarantees posted with any  
12 governmental agencies having jurisdiction, the council shall request  
13 the association to cause such common elements and improvements  
14 to be inspected and evaluated for compliance with the developer's  
15 warranty and construction obligations, with the assistance of  
16 qualified independent engineering and legal consultants selected by  
17 the council. The fees for such consultants shall be paid from funds  
18 contributed by the developer.

19 (1) Public improvements to be dedicated to any governmental  
20 entity shall be exempt from any direct warranty or construction  
21 defect claims by the association or the unit owners other than the  
22 developer. Acceptance of any such public improvements by the  
23 governmental entity to which they are to be dedicated shall be  
24 deemed conclusive evidence that such improvements have been  
25 satisfactorily completed and the developer shall have no further  
26 obligation with respect to those improvements, either to the  
27 association, to any unit owners other than the developer, or to any  
28 governmental agency having jurisdiction.

29 (2) Within 120 days after the association's receipt of any request  
30 for inspection of any phase of the completed common elements or  
31 other improvements, the council shall require its engineering  
32 consultant to inspect the particular completed improvements and  
33 render a written evaluation of them to the council. A copy of the  
34 final report, following the council's review of the initial evaluation,  
35 shall be furnished to the developer within 30 days after the  
36 committee's receipt of the report. Thereafter, the council and the  
37 developer shall conduct one or more joint inspections of the  
38 common elements and other improvements covered by the request  
39 and pursue good faith negotiations to resolve any warranty or  
40 construction defect claims against the developer. All fees and  
41 related expenses incurred by the council for engineering and legal  
42 consultants shall be paid promptly by the association from available  
43 designated funds.

44 (3) If a settlement agreement is finalized between the council  
45 and the developer, the developer-controlled executive board shall  
46 have the authority to execute an agreement and to release the  
47 declarant from all liability with respect to the completed common  
48 elements and improvements, subject to such terms and conditions as

1 may be contained in the agreement. Any such settlement agreement  
2 and release shall be legally binding upon the association and the  
3 unit owners, provided that its form is approved by the independent  
4 legal counsel retained by the council on behalf of the association.

5 (4) If no settlement agreement is approved by the council within  
6 180 days after the request for inspection, the parties shall be  
7 obligated to proceed to mediation within 30 days thereafter in  
8 accordance with section 10 of P.L. , c. (C. ) (pending before  
9 the Legislature as this bill). If no settlement is reached through  
10 mediation within 15 days after commencement of same, then the  
11 parties shall promptly proceed to non-binding arbitration of any  
12 remaining issues in accordance with rules promulgated by the  
13 director. Such mediation and non-binding arbitration shall be  
14 conditions precedent to any litigation of the warranty and  
15 construction defect claims against the developer. All professional  
16 fees and expenses reasonably incurred by the association with  
17 regard to the mediation or arbitration, or both, shall be borne by the  
18 owners, including the developer, in the same manner as common  
19 expenses are allocated and paid by the association promptly upon  
20 the receipt of written authorization of the council.

21 (5) In the event that no settlement agreement and releases are  
22 executed with respect to any completed common elements or  
23 improvements during the period of developer control of the  
24 governing board of the association, any statutes of limitation or  
25 repose applicable to that association concerning common elements,  
26 including, but not limited to statutory warranties, shall be extended  
27 for a period of one year after the assumption of control of the  
28 governing board by owners other than the developer.

29 (6) The procedures set forth in this section shall also apply to  
30 and be binding upon the developer and the association after the unit  
31 owners, other than the developer, assume control of the governing  
32 board of the association; provided, however, that the governing  
33 board after that transition shall not be bound by the  
34 recommendations of the council of owners. The governing board  
35 controlled by the owners may vote to abolish the council of owners  
36 at any time after the owners have assumed control of the governing  
37 board.

38 (cf: P.L.1993, c.30, s.5)

39  
40 41. Section 6 of P.L.1993, c.30 (C.45:22A-48) is amended to  
41 read as follows:

42 6. The **【Commissioner of Community Affairs】** Commission on  
43 Shared Ownership Communities shall cause to be prepared and  
44 distributed, for the use and guidance of associations, **【executive】**  
45 governing boards and **【administrators】** professionals hired by such  
46 boards to assist them, explanatory materials and guidelines to assist  
47 them in achieving proper and timely compliance with the  
48 requirements of P.L.1993, c.30 (C.45:22A-43 et al.) and with the

1 requirements of P.L. , c. (C. ) (pending before the  
2 Legislature as this bill). Such guidelines may include the text of  
3 model bylaw provisions suggested or recommended for adoption.

4 The commission shall also make available, on an Internet web  
5 site maintained by it, descriptions of the outcomes of dispute  
6 resolution procedures overseen by the commission, indexed by  
7 subject matter.

8 The commission shall publish a quarterly newsletter to be  
9 furnished to any member of any association requesting it and shall  
10 also publish the newsletter electronically for viewing on the  
11 Internet.

12 **【Failure or refusal of an association or executive board to make**  
13 **proper amendment or supplementation of its bylaws prior to the**  
14 **effective date of P.L.1993, c.30 (C.45:22A-43 et al.) shall not,**  
15 **however, affect their obligation of compliance therewith on and**  
16 **after that effective date.】** Any owner or tenant of an owner in a  
17 shared ownership community may seek the assistance of the  
18 Commission on Shared Ownership Communities pursuant to section  
19 6 of P.L. , c. (C. ) (pending before the Legislature as this  
20 bill) to address the failure of an association to make proper  
21 amendment or supplementation of its bylaws in order to comply  
22 with any statutory requirements.

23 (cf: P.L.1993, c.30, s.6)

24

25 42. Section 14 of P.L.1979, c.157 (C.46:8B-14) is amended to  
26 read as follows:

27 14. The association, acting through its officers or governing  
28 board, shall be responsible for the performance of the following  
29 duties, the costs of which shall be common expenses:

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

32 (b) The assessment and collection of funds for common  
33 expenses and the payment thereof.

34 (c) The adoption, distribution, amendment and enforcement of  
35 rules governing the use and operation of the condominium and the  
36 condominium property and the use of the common elements,  
37 including but not limited to the imposition of reasonable fines,  
38 assessments and late fees upon unit owners, if authorized by the  
39 master deed or bylaws, subject to the right of a majority of unit  
40 owners to change any such rules.

41 (d) The maintenance of insurance against loss by fire or other  
42 casualties normally covered under broad-form fire and extended  
43 coverage insurance policies as written in this State, covering all  
44 common elements and all structural portions of the condominium  
45 property and the application of the proceeds of any such insurance  
46 to restoration of such common elements and structural portions【 if  
47 such restoration shall otherwise be required under the provisions of  
48 this act or the master deed or bylaws】.

1 (e) The maintenance of insurance against liability for personal  
2 injury and death for accidents occurring within the common  
3 elements whether limited or general and the defense of any actions  
4 brought by reason of injury or death to person, or damage to  
5 property occurring within such common elements and not arising by  
6 reason of any act or negligence of any individual unit owner.

7 (f) The master deed or bylaws may require the association to  
8 protect blanket mortgages, or unit owners and their mortgagees, as  
9 their respective interest may appear, under the policies of insurance  
10 provided under clauses (d) and (e) of this section, or against such  
11 risks with respect to any or all units, and may permit the assessment  
12 and collection from a unit owner of specific charges for insurance  
13 coverage applicable to his unit.

14 (g) The maintenance of **【accounting】** records, in accordance  
15 with generally accepted accounting principles, open to inspection at  
16 reasonable times by unit owners. Such records shall include:

17 (i) A record of all receipts and expenditures.

18 (ii) An account for each unit setting forth any shares of common  
19 expenses or other charges due, the due dates thereof, the present  
20 balance due, and any interest in common surplus.

21 (iii) all items required pursuant to section 19 of P.L. \_\_\_\_\_,  
22 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill).

23 (h) Nothing herein shall preclude any unit owner or other person  
24 having an insurable interest from obtaining insurance at his own  
25 expense and for his own benefit against any risk whether or not  
26 covered by insurance maintained by the association.

27 (i) Such other duties as may be set forth in the master deed or  
28 bylaws.

29 (j) An association shall exercise its powers and discharge its  
30 functions in a manner that protects and furthers or is not  
31 inconsistent with the health, safety and general welfare of the  
32 residents of the community.

33 (k) An association shall provide a fair and efficient procedure  
34 for the resolution of **【housing-related】** disputes between individual  
35 unit owners and the association, and between unit owners, which  
36 shall be readily available as an alternative to litigation. Any costs  
37 associated with the procedure shall be borne by the association as a  
38 common expense, and no costs shall be assessable against any  
39 individual owner or owners. A person other than an officer of the  
40 association, a member of the governing board or a unit owner  
41 involved in the dispute shall be made available to resolve the  
42 dispute. **【A unit owner may notify the Commissioner of**  
43 **Community Affairs if an association does not comply with this**  
44 **subsection. The commissioner shall have the power to order the**  
45 **association to provide a fair and efficient procedure for the**  
46 **resolution of disputes】** A unit owner who has availed himself of  
47 the dispute resolution procedures provided by his association, but  
48 who does not consider the matter resolved, may file a request for



1 dispute resolution services with the Commission on Shared  
2 Ownership Communities, established pursuant to section 5 of  
3 P.L. , c. (C. ) (pending before the Legislature as this bill).  
4 (cf: P.L.1996, c.79, s.2)

5  
6 43. Section 12 of P.L.1969, c.257 (C.46:8B-12) is amended to  
7 read as follows:

8 The association provided for by the master deed shall be  
9 responsible for the administration and management of the  
10 condominium and condominium property, including but not limited  
11 to the conduct of all activities **【of common interest to】** on the  
12 common property of the unit owners. The association may be any  
13 entity recognized by the laws of New Jersey, including but not  
14 limited to a business corporation or a nonprofit corporation.  
15 Condominium associations established after the effective date of  
16 P.L. , c. (C. ) (pending before the Legislature as this bill)  
17 shall be incorporated as nonprofit corporations.  
18 (cf: P.L.1969, c.257, s.12)

19  
20 44. Section 2 of P.L.1979, c.157 (C.46:8B-12.1) is amended to  
21 read as follows:

22 2. a. **【When】** For associations formed prior to the effective  
23 date of P.L. , c. (C. ) (pending before the Legislature as  
24 this bill), when unit owners other than the developer own 25% or  
25 more of the units in a condominium that will be operated ultimately  
26 by an association, the unit owners other than the developer shall be  
27 entitled to elect not less than 25% of the members of the governing  
28 board or other form of administration of the association. Unit  
29 owners other than the developer shall be entitled to elect not less  
30 than 40% of the members of the governing board or other form of  
31 administration upon the conveyance of 50% of the units in a  
32 condominium. Unit owners other than the developer shall be  
33 entitled to elect all of the members of the governing board or other  
34 form of administration upon the conveyance of 75% of the units in a  
35 condominium. However, when some of the units of a condominium  
36 have been conveyed to purchasers and none of the others are being  
37 constructed or offered for sale by the developer in the ordinary  
38 course of business, the unit owners other than the developer shall be  
39 entitled to elect all of the members of the governing board or other  
40 form of administration.

41 Notwithstanding any of the provisions of subsection a of this  
42 section, the developer shall be entitled to elect at least one member  
43 of the governing board or other form of administration of an  
44 association as long as the developer holds for sale in the ordinary  
45 course of business one or more units in a condominium operated by  
46 the association.

47 b. Within 30 days after the unit owners other than the  
48 developer are entitled to elect a member or members of the

1 governing board or other form of administration of an association,  
2 the association shall call, and give not less than 20 days' nor more  
3 than 30 days' notice of, a meeting of the unit owners to elect the  
4 members of the governing board or other form of administration.  
5 The meeting may be called and the notice given by any unit owner  
6 if the association fails to do so.

7 c. If a developer holds one or more units for sale in the  
8 ordinary course of business, none of the following actions may be  
9 taken without approval in writing by the developer:

10 (1) Assessment of the developer as a unit owner for capital  
11 improvements.

12 (2) Any action by the association that would be detrimental to  
13 the sales of units by the developer. However, an increase in  
14 assessments for common expenses without discrimination against  
15 the developer shall not be deemed to be detrimental to the sales of  
16 units.

17 On or after the after the effective date of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)  
18 (pending before the Legislature as this bill), elections for and  
19 control of a governing board of an association shall be in  
20 accordance with section 5 of P.L.1993, c.30 (C.45:22A-47).

21 d. **【**Prior to, or not more than 60 days after, the time that unit  
22 owners other than the developer elect a majority of the members of  
23 the governing board or other form of administration of an  
24 association, the developer shall relinquish control of the  
25 association, and the unit owners shall accept control.  
26 **Simultaneously,】** When control of an association is required to be  
27 relinquished by a developer pursuant to section 5 of P.L.1993, c.30  
28 (C.45:22A-47), the developer shall deliver to the association all  
29 property of the unit owners and of the association held or controlled  
30 by the developer, including, but not limited to, the following items,  
31 if applicable, as to each condominium operated by the association:

32 (1) A photocopy of the master deed and all amendments thereto,  
33 certified by affidavit of the developer, or an officer or agent of the  
34 developer, as being a complete copy of the actual master deed.

35 (2) A certified copy of the association's articles of incorporation,  
36 or if not incorporated, then copies of the documents creating the  
37 association.

38 (3) A copy of the bylaws.

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

41 (5) Any house rules and regulations which have been  
42 promulgated.

43 (6) Resignations of officers and members of the governing  
44 board or other form of administration who are required to resign  
45 because the developer is required to relinquish control of the  
46 association.

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

1 (8) Association funds or control thereof.

2 (9) All tangible personal property that is property of the  
3 association, represented by the developer to be part of the common  
4 elements or ostensibly part of the common elements, and an  
5 inventory of that property.

6 (10) A copy of the plans and specifications utilized in the  
7 construction or remodeling of improvements and the supplying of  
8 equipment to the condominium and in the construction and  
9 installation of all mechanical components serving the improvements  
10 and the site, with a certificate in affidavit form of the developer, his  
11 agent, or an architect or engineer authorized to practice in this State  
12 that such plans and specifications represent, to the best of their  
13 knowledge and belief, the actual plans and specifications utilized in  
14 the construction and improvement of the condominium property and  
15 for the construction and installation of the mechanical components  
16 serving the improvements. If the condominium property has been  
17 declared a condominium more than 3 years after the completion of  
18 construction or remodeling of the improvements, the requirements  
19 of this paragraph shall not apply.

20 (11) Insurance policies.

21 (12) Copies of any certificates of occupancy which may have  
22 been issued for the condominium property.

23 (13) Any other permits issued by governmental bodies  
24 applicable to the condominium property in force or issued within 1  
25 year prior to the date the unit owners other than the developer take  
26 control of the association.

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

29 (15) A roster of unit owners and their addresses and telephone  
30 numbers, if known, as shown on the developer's records.

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

33 (17) Employment contracts, management contracts, maintenance  
34 contracts, contracts for the supply of equipment or materials, and  
35 service contracts in which the association is one of the contracting  
36 parties and maintenance contracts and service contracts in which the  
37 association or the unit owners have an obligation or responsibility,  
38 directly or indirectly to pay some or all of the fee or charge of the  
39 person or persons performing the service.

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

41 (cf: P.L.1979, c.157, s.2)

42

43 45. Section 15 of P.L.1979, c.157 (C.46:8B-15) is amended to  
44 read as follows:

45 15. Subject to the provisions of the master deed, the bylaws,  
46 rules and regulations and the provisions of this act or other  
47 applicable law, the association shall have the following powers:

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

12 (b) The association shall have access to each unit from time to  
13 time during reasonable hours as may be necessary for the  
14 maintenance, repair or replacement of any common elements  
15 therein or accessible therefrom or for making emergency repairs  
16 necessary to prevent damage to common elements or to any other  
17 unit or units. The association may charge the unit owner for the  
18 repair of any common element damaged by the unit owner or his  
19 tenant.

20 (c) The association may purchase units in the condominium and  
21 otherwise acquire, hold, lease, mortgage and convey the same. It  
22 may also lease or license the use of common elements in a manner  
23 not inconsistent with the rights of unit owners.

24 (d) The association may acquire or enter into agreements  
25 whereby it acquires leaseholds, memberships or other possessory or  
26 use interests in lands or facilities including, but not limited to  
27 country clubs, golf courses, marinas and other recreational  
28 facilities, whether or not contiguous to the condominium property,  
29 intended to provide for the enjoyment, recreation or other use or  
30 benefit of the unit owners. If fully described in the master deed or  
31 bylaws, the fees, costs and expenses of acquiring, maintaining,  
32 operating, repairing and replacing any such memberships, interests  
33 and facilities shall be common expenses. If not so described in the  
34 master deed or bylaws as originally recorded, no such membership  
35 interest or facility shall be acquired except pursuant to amendment  
36 of or supplement to the master deed or bylaws duly adopted as  
37 provided therein and in this act. In the absence of such amendment  
38 or supplement, if some but not all unit owners desire any such  
39 acquisition and agree to assume among themselves all costs of  
40 acquisition, maintenance, operation, repair and replacement thereof,  
41 the association may acquire or enter into an agreement to acquire  
42 the same as limited common elements appurtenant only to the units  
43 of those unit owners who have agreed to bear the costs and  
44 expenses thereof. Such costs and expenses shall be assessed against  
45 and collected from the agreeing unit owners in the proportions in  
46 which they share as among themselves in the common expenses in  
47 the absence of some other unanimous agreement among themselves.  
48 No other unit owner shall be charged with any such cost or expense;

1 provided, however, that nothing herein shall preclude the extension  
2 of the interests in such limited common elements to additional unit  
3 owners by subsequent agreement with all those unit owners then  
4 having an interest in such limited common elements.

5 (e) The association may levy and collect assessments duly made  
6 by the association for a share of common expenses **【or otherwise】**,  
7 including any other moneys duly owed the association, upon proper  
8 notice to the appropriate unit owner, together with interest thereon,  
9 late fees and reasonable attorneys' fees, if authorized by the master  
10 deed or bylaws.

11 All funds collected by an association shall be maintained  
12 separately in the association's name. For investment purposes only,  
13 reserve funds may be commingled with operating funds of the  
14 association. Commingled operating and reserve funds shall be  
15 accounted for separately, and a commingled account shall not, at  
16 any time, be less than the amount identified as reserve funds. A  
17 manager or business entity managing a condominium, or an agent,  
18 employee, officer, or director of an association, shall not  
19 commingle any association funds with his or her funds or with the  
20 funds of any other condominium association or the funds of another  
21 association as defined in section 3 of P.L.1977, c.419 (C.45:22A-  
22 23).

23 **【If】** Other than during the period of developer control as set  
24 forth in section 5 of P.L.1993, c.30 (C.45:22A-47), if authorized by  
25 the master deed or bylaws, the association may levy and collect a  
26 capital contribution, membership fee or other charge upon the  
27 **【initial sale or subsequent】** resale of a unit, which collection shall  
28 be earmarked for the purpose of maintenance of or improvements to  
29 common elements to defray common expenses **【or otherwise】**,  
30 provided that such charge shall not exceed nine times the amount of  
31 the most recent monthly common expense assessment for that unit.

32 (f) If authorized by the master deed or bylaws, the association  
33 may impose reasonable fines upon unit owners for failure to comply  
34 with provisions of the master deed, bylaws or rules and regulations,  
35 subject to the following provisions:

36 A fine for a violation or a continuing violation of the master  
37 deed, bylaws or rules and regulations shall not exceed **【the**  
38 **maximum monetary penalty permitted to be imposed for a violation**  
39 **or a continuing violation under section 19 of the "Hotel and**  
40 **Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-19)】** \$50 per  
41 violation per day, or a total of \$2,500 for continuing violations.

42 On roads or streets with respect to which Title 39 of the Revised  
43 Statutes is in effect under section 1 of P.L.1945, c.284 (C.39:5A-1),  
44 an association may not impose fines for moving automobile  
45 violations.

46 A fine shall not be imposed unless the association has filed the  
47 required information with the Commission on Shared Ownership  
48 Communities pursuant to section 10 of P.L. , c. (C. )

1 (pending before the Legislature as this bill) and the unit owner is  
2 given written notice of the action taken and of the alleged basis for  
3 the action, and is advised of the right to participate in a dispute  
4 resolution procedure in accordance with subsection (k) of section 14  
5 of P.L.1969, c.257 (C.46:8B-14), and advised of the further right to  
6 file an appeal with the Commission on Shared Ownership  
7 Communities. A unit owner who does not believe that the dispute  
8 resolution procedure has satisfactorily resolved the matter shall not  
9 be prevented from seeking dispute resolution with the Commission  
10 on Shared Ownership Communities in the manner provided under  
11 section 5 of P.L. , c. (C. ) (pending before the Legislature  
12 as this bill), or from seeking a judicial remedy in a court of  
13 competent jurisdiction, in which case the filing of a lien for any fine  
14 imposed shall be postponed until a final determination has been  
15 made concerning the fine by either the commission or the court.

16 (g) Such other powers as may be set forth in the master deed or  
17 bylaws, if not prohibited by P.L.1969, c.257 (C.46:8B-1 et seq.) or  
18 any other law of this State.

19 (cf: P.L.2007, c.165, s.1)

20

21 46. This act shall take effect immediately.

22

23

24

#### STATEMENT

25

26 It has been more than 30 years since the Legislature enacted  
27 "The Planned Real Estate Development Full Disclosure Act,"  
28 (PREDFDA), P.L.1977, c.419 (C.45:22A-21 et seq.) to provide  
29 State oversight of the marketing of planned developments to  
30 prospective purchasers, through a review of documents and  
31 advertisements, as well as requiring that certain disclosures be made  
32 by a developer to a buyer. Marketing techniques are important  
33 because membership in a homeowner association is mandatory for a  
34 purchaser of a home in community which has shared property and  
35 facilities, such as a condominium, cooperative, or a single family  
36 home in a planned development. The shared property of such  
37 communities is owned collectively by all of the individual home  
38 purchasers. These communities are referred to as "shared  
39 ownership communities" in the bill and are often known as common  
40 interest communities.

41 It has also been more than 10 years since the Assembly Task  
42 Force to Study Homeowners' Associations released its report  
43 containing more than 30 recommendations calling for changes in  
44 the laws, in order to provide more protections for homeowners.  
45 This bill addresses most of those recommendations, as well as  
46 updating the laws requiring disclosure by developers and clarifying  
47 the powers and obligations of governing boards of associations and  
48 the rights of owners living in such communities.

1 The bill revises the manner in which information should be  
2 provided prospective purchasers through the Public Offering  
3 Statement, (POS) a document required to be provided to prospective  
4 purchasers by developers of such communities. Although New  
5 Jersey's statutes require certain disclosures by a developer during  
6 the sales phase of shared ownership communities, these disclosures  
7 have too often been inadequate to properly inform prospective  
8 purchasers. Items which are likely to be of extreme importance to a  
9 purchaser, such as obligations, governance structures, potential  
10 future liabilities, restrictions, or, even in some cases, hidden loans  
11 on the part of a developer to the association, may be buried deep  
12 within the document, and not disclosed adequately, if at all. The  
13 sheer volume of information, which varies widely by developers on  
14 matters which could be standardized, also hinders adequate review  
15 by the State.

16 The bill requires the POS, and the registration of developments  
17 process, to be revised and streamlined. A developer will be  
18 required to submit information on standardized forms and in an  
19 electronic format. Governance structures will be standardized and  
20 developers allowed to highlight variations that they wish to apply.  
21 Processing times for registrations of developments will be reduced  
22 under the bill from 90 to 45 days for standardized submissions. The  
23 information in the Public Offering Statement to be disclosed to a  
24 prospective purchaser will be revised to be quickly accessed by the  
25 reader, as well as indexed under logical headings, such as pets,  
26 parking, restrictions and fees. An executive summary of the  
27 offering is required to be made in plain language, explaining the  
28 rights, liabilities, obligations and governing form applicable to the  
29 association.

30 The bill also addresses the problem that planned communities  
31 with fewer than 100 units have been exempted from registration  
32 under the act. This has been interpreted by the administering  
33 agency as exempting developers from providing a POS, thus  
34 providing no protections for purchasers in smaller communities.  
35 The exemption has also been extended by regulations to all low and  
36 moderate income (*Mount Laurel*) communities of any size.  
37 Exemption from the PREDFDA also clouds many other issues, such  
38 as when a developer of a planned community must turn over the  
39 assets to the homeowners. The bill removes these exemptions, and  
40 requires a Public Offering Statement for every prospective  
41 purchaser in a planned community. The regressive flat rate  
42 development charge currently charged to developers of planned  
43 communities is replaced under the bill with a per unit fee of 3/100  
44 of one percent (.0003) of the sales price. These fees are currently  
45 required to be used to defray the costs of the State's review under  
46 the statute, and will continue to be used for that purpose, as well as  
47 to offset costs for other homeowner protections added by the bill.  
48 The change from a flat rate fee to a per unit fee will result in lower

1 fees on lower priced homes, and in most instances will result in  
2 decreased fees being paid per development than is the case now.

3 In addition, the bill addresses problems which arise in what may  
4 be termed the “governance” stage of a homeowners’ association.  
5 After the developer has sold at least 75 percent of the homes  
6 planned for the community, total control of the management of the  
7 commonly-owned property is transferred from the developer to the  
8 home owners in the community. Experience shows that owners are  
9 not adequately prepared for this event.

10 The bill allows owners to have earlier exposure to operational  
11 issues and input into governance matters, as well as requires boards  
12 to adopt principles of democratic and transparent governance. The  
13 bill requires the creation of an owners’ coordinating council in each  
14 association, consisting of at least three owners, during the time  
15 period that the developer controls the voting interest of the  
16 association governing board. The owners’ coordinating council will  
17 function as a steering committee for owners, and serve as the  
18 election monitor when owners other than the developer are entitled  
19 by statute to be elected as voting members of the governing board.  
20 In addition, the owners’ council will be permitted to bring claims to  
21 a commission formed under the bill, on matters affecting  
22 construction deficiencies in the common elements during the period  
23 of developer control. The inability of owners to file warranty  
24 claims concerning defects in common elements was found to be a  
25 problem by the State Commission of Investigation in its report of  
26 abuses in the new home construction industry.

27 The bill addresses the inconsistency in various statutes affecting  
28 owners’ rights in different types of shared ownership communities,  
29 by amending the laws to eliminate these inconsistencies.

30 The bill creates a commission in, but not of, the Department of  
31 Law and Public Safety, to serve as a State resource center, liaison  
32 and educational resource to owners and their shared ownership  
33 community associations, and to coordinate low cost, reliable  
34 alternative dispute resolution (ADR) services to these associations.  
35 The commission will also serve as a hearing entity concerning  
36 violations of statutory law pertaining to associations. The  
37 commission is modeled after a very successful program created by  
38 Montgomery County, Maryland for homeowner associations under  
39 its jurisdiction.

40 The bill addresses a critical need of the many owners whose  
41 associations have not provided any ADR or ADR which is not  
42 impartial. Many associations have adopted a process too biased or  
43 expensive to serve as a viable alternative to litigation. Because  
44 associations can charge each owner the cost of the board’s attorney  
45 as a common expense, many boards are quick to invite litigation,  
46 rather than amicably resolve disputes. In some instances, even  
47 when a board’s actions blatantly violate bylaws, or are flagrantly  
48 illegal, State and local officials are often unwilling or unable to get



1 involved, citing the “private” nature of such communities. This  
2 places an undue financial burden on individual owners, many of  
3 whom are senior citizens on fixed incomes.

4 The bill also addresses the general lack of information about  
5 community associations, and a lack of standards for the manner in  
6 which they may operate. The commission created by the bill and  
7 the State entity responsible for oversight of marketing of new  
8 homes is charged with creating a booklet providing detailed  
9 information to owners concerning general information, State and  
10 federal laws, resources available, and the standards of governance  
11 established for association governing boards. The commission will  
12 also be responsible for posting the information to a web site.

13 The commission is also required under the bill to promulgate  
14 standards for transparent and democratic governance in the  
15 operation of shared ownership communities. The standards may be  
16 more specific than the provisions of the bill, but must comport with  
17 the Legislature’s intent to foster open, democratic processes in such  
18 communities.

19 The funding for the activities of the commission and the  
20 alternative dispute resolution services will come from fees already  
21 collected and earmarked for protections of owners under the "The  
22 Planned Real Estate Development Full Disclosure Act." The bill  
23 requires that all associations provide certain information annually to  
24 the Commission on Shared Ownership Communities. There is no  
25 fee to file under the bill, but those associations that do not provide  
26 the information will not be eligible as qualified private communities  
27 to seek reimbursement from their municipality for services provided  
28 to them, such as trash, leaf and snow removal, and, in addition, will  
29 not be permitted to impose fines upon members, or to receive  
30 approval to file liens based on fines imposed.

31 In order to recognize the governmental nature of homeowners  
32 associations, and to provide the best enforcement of statutory  
33 protections for prospective homebuyers in shared ownership  
34 communities, the bill moves the responsibility for the “The Planned  
35 Real Estate Development Act” to a new bureau within the Division  
36 of Consumer Affairs in the Department of Law and Public Safety,  
37 to be known as the “Bureau of Homebuyers Protection.” The  
38 Division of Consumer Affairs currently has significant experience  
39 in administering consumer protection programs; for example it has  
40 the responsibility for overseeing the “Home Improvement  
41 Contractor’s Registration Act” and “the consumer fraud act.” In  
42 addition, relocating homebuyer protections will help to minimize  
43 conflicts of interests concerning builders under other programs in  
44 the Department of Community Affairs, such as its role as the  
45 enforcer of construction codes, licensing of code inspectors, and  
46 overseeing the “New Home Warranty Program.”