ASSEMBLY, No. 3683



STATE OF NEW JERSEY

217th LEGISLATURE



INTRODUCED MAY 12, 2016

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

SYNOPSIS

Prohibits condominium associations from assessing insurance deductibles to individual unit owners or groups of unit owners.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning condominium association insurance policies and amending P.L.1969, c.257.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 3 of P.L.1969, c.257 (C.46:8B-3) is amended to read as follows:

3. The following words and phrases as used in **[**this act**]** P.L.1969, c.257 (C.46:8B-1 et seq.) shall have the meanings set forth in this section unless the context clearly indicates otherwise:

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

b. "Association" means the entity responsible for the administration of a condominium, which entity may be incorporated or unincorporated.

c. "Bylaws" means the governing regulations adopted under **[**this act**]** P.L.1969, c.257 (C.46:8B-1 et seq.) for the administration and management of the property.

d. Common elements" means:

(i) the land described in the master deed;

(ii) as to any improvement, the foundations, structural and bearing parts, supports, main walls, roofs, basements, halls, corridors, lobbies, stairways, elevators, entrances, exits and other means of access, excluding any specifically reserved or limited to a particular unit or group of units;

(iii) yards, gardens, walkways, parking areas and driveways, excluding any specifically reserved or limited to a particular unit or group of units;

(iv) portions of the land or any improvement or appurtenance reserved exclusively for the management, operation or maintenance of the common elements or of the condominium property;

(v) installations of all central services and utilities;

(vi) all apparatus and installations existing or intended for common use;

(vii) all other elements of any improvement necessary or convenient to the existence, management, operation, maintenance and safety of the condominium property or normally in common use; and

(viii) such other elements and facilities as are designated in the master deed as common elements.

e. "Common expenses" means expenses for which the unit owners are proportionately liable, including but not limited to:

(i) all expenses of administration, maintenance, repair and replacement of the common elements, including deductibles on insurance coverage;

(ii) expenses agreed upon as common by all unit owners; and

(iii) expenses declared common by provisions of **[**this act**]** P.L.1969, c.257 (C.46:8B-1 et seq.) or by the master deed or by the bylaws.

f. "Common receipts" means:

(i) rent and other charges derived from leasing or licensing the use of common elements;

(ii) funds collected from unit owners as common expenses or otherwise; and

(iii) receipts designated as common by the provisions of **[**this act**]** P.L.1969, c.257 (C.46:8B-1 et seq.) or by the master deed or the bylaws.

g. "Common surplus" means the excess of all common receipts over all common expenses.

h. "Condominium" means the form of ownership of real property under a master deed providing for ownership by one or more owners of units of improvements together with an undivided interest in common elements appurtenant to each such unit.

i. "Condominium property" means the land covered by the master deed, whether or not contiguous and all improvements thereon, all owned either in fee simple or under lease, and all easements, rights and appurtenances belonging thereto or intended for the benefit thereof.

j. "Developer" means the person or persons who create a condominium or lease, sell or offer to lease or sell a condominium or units of a condominium in the ordinary course of business, but does not include an owner or lessee of a unit who has acquired his unit for his own occupancy.

k. "Limited common elements" means those common elements which are for the use of one or more specified units to the exclusion of other units.

l. "Majority" or "majority of the unit owners" means the owners of more than **[**50%**]** 50 percent of the aggregate in interest of the undivided ownership of the common elements as specified in the master deed. If a different percentage of unit owners is required to be determined under **[**this act**]** P.L.1969, c.257 (C.46:8B-1 et seq.) or under the master deed or bylaws for any purpose, such different percentage of owners shall mean the owners of an equal percentage of the aggregate in interest of the undivided ownership of the common elements as so specified.

m. "Master deed" means the master deed recorded under the terms of section 8 of **[**this act**]** P.L.1969, c.257 (C.46:8B-1 et seq.), as such master deed may be amended or supplemented from time to time, being the instrument by which the owner in fee simple or lessee of the property submits it to the provisions of this chapter.

n. "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

o. "Unit" means a part of the condominium property designed or intended for any type of independent use, having a direct exit to a public street or way or to a common element or common elements leading to a public street or way or to an easement or right of way leading to a public street or way, and includes the proportionate undivided interest in the common elements and in any limited common elements assigned thereto in the master deed or any amendment thereof.

p. "Unit deed" means a deed of conveyance of a unit in recordable form.

q. "Unit owner" means the person or persons owning a unit in fee simple.

(cf: P.L.1979, c.157, s.1)

2. Section 15 of P.L.1969, c.257 (C.46:8B-15) is amended to read as follows:

15. Subject to the provisions of the master deed, the bylaws, rules and regulations and the provisions of **[**this act**]** P.L.1969, c.257 (C.46:8B-1 et seq.) or other applicable law, the association shall have the following powers:

(a) Whether or not incorporated, the association shall be an entity which shall act through its officers and may enter into contracts, bring suit and be sued. If the association is not incorporated, it may be deemed to be an entity existing pursuant to **[**this act**]** P.L.1969, c.257 (C.46:8B-1 et seq.) and a majority of the members of the governing board or of the association, as the case may be, shall constitute a quorum for the transaction of business. Process may be served upon the association by serving any officer of the association or by serving the agent designated for service of process. Service of process upon the association shall not constitute service of process upon any individual unit owner.

(b) The association shall have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein or accessible therefrom or for making emergency repairs necessary to prevent damage to common elements or to any other unit or units. The association may charge the unit owner for the repair of any common element damaged by the unit owner or his tenant; provided, however, the association shall not pass the cost of an insurance deductible to a unit owner or his tenant, or a group of unit owners or their tenants for the repair of any common element or unit not intentionally damaged by them.

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

(d) The association may acquire or enter into agreements whereby it acquires leaseholds, memberships or other possessory or use interests in lands or facilities including, but not limited to country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the condominium property, intended to provide for the enjoyment, recreation or other use or benefit of the unit owners. If fully described in the master deed or bylaws, the fees, costs and expenses of acquiring, maintaining, operating, repairing and replacing any such memberships, interests and facilities shall be common expenses. If not so described in the master deed or bylaws as originally recorded, no such membership interest or facility shall be acquired except pursuant to amendment of or supplement to the master deed or bylaws duly adopted as provided therein and in **[**this act**]** P.L.1969, c.257 (C.46:8B-1 et seq.). In the absence of such amendment or supplement, if some but not all unit owners desire any such acquisition and agree to assume among themselves all costs of acquisition, maintenance, operation, repair and replacement thereof, the association may acquire or enter into an agreement to acquire the same as limited common elements appurtenant only to the units of those unit owners who have agreed to bear the costs and expenses thereof. Such costs and expenses shall be assessed against and collected from the agreeing unit owners in the proportions in which they share as among themselves in the common expenses in the absence of some other unanimous agreement among themselves. No other unit owner shall be charged with any such cost or expense; provided, however, that nothing herein shall preclude the extension of the interests in such limited common elements to additional unit owners by subsequent agreement with all those unit owners then having an interest in such limited common elements.

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

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

If authorized by the master deed or bylaws, the association may levy and collect a capital contribution, membership fee or other charge upon the initial sale or subsequent resale of a unit, which collection shall be earmarked for the purpose of maintenance of or improvements to common elements to defray common expenses or otherwise, provided that such charge shall not exceed nine times the amount of the most recent monthly common expense assessment for that unit.

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

A fine for a violation or a continuing violation of the master deed, bylaws or rules and regulations shall not exceed the maximum monetary penalty permitted to be imposed for a violation or a continuing violation under section 19 of the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-19).

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

A fine shall not be imposed unless the unit owner is given written notice of the action taken and of the alleged basis for the action, and is advised of the right to participate in a dispute resolution procedure in accordance with subsection (k) of section 14 of P.L.1969, c.257 (C.46:8B-14). A unit owner who does not believe that the dispute resolution procedure has satisfactorily resolved the matter shall not be prevented from seeking a judicial remedy in a court of competent jurisdiction.

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

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

3. Section 24 of P.L.1969, c.257 (C.46:8B-24) is amended to read as follows:

24. (a) Damage to or destruction of any improvements on the condominium property or any part thereof or to a common element or elements or any part thereof covered by insurance required to be maintained by the association shall be repaired and restored by the association using the proceeds of any such insurance. **[**The**]** Except as provided in subsection (b) of section 15 of P.L.1969, c.257 (C.46:8B-15), the unit owners directly affected shall be assessed on an equitable basis for any deficiency and shall share in any excess.

(b) If the proceeds of such insurance shall be inadequate by a substantial amount to cover the estimated cost of restoration of an essential improvement or common element or if such damage shall constitute substantially total destruction of the condominium property or of one or more of the buildings comprising the condominium property or if **[**75%**]** 75 percent of the unit owners directly affected by such damage or destruction voting in accordance with the procedures established by the by-laws shall determine not to repair or restore, the association shall proceed to realize upon the salvage value of that portion of the condominium property so damaged or destroyed either by sale or such other means as the association may deem advisable and shall collect the proceeds of any insurance. Thereupon the net proceeds of such sale, together with the net proceeds of such insurance shall be considered as one fund to be divided among the unit owners directly affected by such damage or destruction in proportion to their respective undivided ownership of the common elements. Any liens or encumbrances on any affected unit shall be relegated to the interest in the fund of the unit owners.

(c) The master deed or the by-laws may make other and different provision covering the eventualities set forth in paragraphs (a) and (b) of this section or covering other results of damage or destruction to any part or all of the condominium property, notwithstanding the provisions of paragraphs (a) and (b). If the master deed or by-laws shall require insurance against fire and other casualty with respect to individual units, it shall also provide for the application of the proceeds and the rights and obligations of unit owners in case of damage or destruction.

(cf: P.L.1969, c.257, s.24)

4. This act shall take effect immediately.

STATEMENT

This bill would prevent condominium associations from assessing insurance deductibles to individual unit owners or groups of unit owners. Under current law, a condominium association can pass the cost of any deductible arising from a claim under the association's insurance policy to an individual unit owner. This bill would prevent condominium associations from placing the burden of a deductible on one owner or a group of owners. The bill would ensure that unit owners realize the full benefit of an association's insurance policy, which is the pooling of risks among a large group of similarly situated individuals.