

ASSEMBLY HOUSING AND COMMUNITY DEVELOPMENT
COMMITTEE

STATEMENT TO

[First Reprint]
SENATE, No. 2492

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2016

The Assembly Housing and Community Development Committee reports favorably Senate Bill No. 2492 (1R) with committee amendments.

As amended by the committee, this bill establishes certain minimum voting participation rights in planned real estate developments.

The amended bill defines an “association member” as a unit owner, and may also include tenants to the extent that the association’s bylaws permit tenant membership in the association. Recently-established associations may also permit the developer’s membership if all the units have not yet been sold. The amended bill also defines a “voting-eligible tenant” as a tenant residing in a development that permits the tenant’s participation in executive board elections through its bylaws. The amended bill confers voting eligibility upon all association members and voting eligible tenants, meaning more than one person per unit could potentially have voting rights. However, the voting influence of a unit would not be altered by the number of association members and voting-eligible tenants connected to the unit.

The amended bill requires that no bylaw, rule or other provision of a governing document of an association may:

- 1) Provide for a term of a board member to be for more than 4 years;
- 2) Prohibit a tenant from casting a vote allocated to a unit if the bylaws otherwise permit tenant participation in an election of board members;
- 3) Provide for less than 14 nor more than 60 days’ notice of the meeting at which an election of board members is scheduled;
- 4) Prohibit a unit owner in good standing from nominating themselves or any other unit owner in good standing as a candidate for any membership position on the executive board;

- 5) Prohibit any unit owner in good standing from voting for any nominated candidate in an executive board election;
- 6) Prevent voting for a board member by electronic means where the executive board determines to employ voting in such manner and an owner consents to casting a vote in such manner; or
- 7) Provide for an allocation of votes other than one vote for each unit, except where the bylaws or other governing document provide for the voting interest to be proportional to a unit's value or size.

Certain types of associations, however, are exempted from some of these requirements. These exemptions consist of the following:

- 1) In a mixed-use development, certain executive board members may be elected exclusively by the association members and voting-eligible tenants of units of the same use-type;
- 2) An association may distribute vote shares proportionally to the number of units in different geographical areas of the development, so that the association members and voting eligible-tenants in each area nominate and elect only certain executive board members representing their part of the development;
- 3) If residents of affordable housing represent a minority of housing units in a development, then the association may limit the number of executive board members that certain association members and voting-eligible tenants may vote for, in order to ensure the election of one or more affordable housing residents to the executive board;
- 4) An association may allow the members of the executive board to be separately nominated and elected by the association members, and voting-eligible tenants, of separate developments, so long as each development's voting weight is proportional, based on the number, value, or size of the units; and
- 5) The executive board of an umbrella or master association that does not directly contain units does not have to be elected by individuals who are association members, and voting-eligible tenants, of units within the geographical area of the umbrella or master association, provided the members of the executive board serve as executive board members of another development executive board, and have been nominated and elected by the association members, and voting-eligible tenants, of units in that development.

Finally, for those developments that do not include a method for amendment by the association membership, or only allow association members to amend the bylaws through a majority vote that is higher than a two-thirds majority, the amended bill establishes a mechanism

though which association members would be able to compel the executive board to hold a meeting at which the association membership could amend the bylaws through a simple majority vote. Compelling this vote would require 15 percent of the association members to present a request for a meeting, at which the vote would be conducted. The amended bill would not allow the use of this mechanism to require a vote on an amendment to the bylaws that had already been voted on by the association in the preceding 12 months.

COMMITTEE AMENDMENTS:

The committee amendments adjust subsection b. of section 3 to narrow the section's focus from providing that association bylaws may allow tenant membership, to providing that the bylaws may allow voting-eligible tenants to participate in executive board elections.

In the provisions of the bill concerning developments that do not include a method for amendment by the association membership, or only allow association members to amend the bylaws through a majority vote that is higher than a two-thirds majority, the amendments establish a mechanism through which association members may compel the executive board to hold a meeting at which the association membership can amend the bylaws through a simple majority vote, as opposed to a two-thirds majority. The amendments require that when an amendment to the bylaws is approved under this process, a copy shall be provided to association members.

The committee amendments also include technical changes to the definition of "association member" and "voting-eligible tenant" in section 2, as well as further technical changes to subsection b. of section 3, section 5, and subsection d. of section 6.

Finally, the committee amendments modify section 5 of the bill to provide that no bylaw, rule or other provision of a governing document of an association may:

- Provide for a term of a board member to be for more than 4 years;
- Prohibit a tenant from casting a vote allocated to a unit if the bylaws otherwise permit tenant participation in an election of board members;
- Provide for less than 14 nor more than 60 days' notice of the meeting at which an election of board members is scheduled;
- Prohibit a unit owner in good standing from nominating themselves or any other unit owner in good standing as a candidate for any membership position on the executive board;
- Prohibit any unit owner in good standing from voting for any nominated candidate in an executive board election;
- Prevent voting for a board member by electronic means where the executive board determines to employ voting in

such manner and an owner consents to casting a vote in such manner; or

- Provide for an allocation of votes other than one vote for each unit, except where the bylaws or other governing document provide for the voting interest to be proportional to a unit's value or size.