

ASSEMBLY, No. 2439

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

Sponsored by:

Assemblyman DANIEL R. BENSON
District 14 (Mercer and Middlesex)

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Assemblyman Giblin

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/16/2018)

1 AN ACT concerning condominium association insurance policies
2 and amending P.L.1969, c.257.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 3 of P.L.1969, c.257 (C.46:8B-3) is amended to read
8 as follows:

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

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

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

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

20 d. "Common elements" means:

21 (i) the land described in the master deed;

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

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

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

33 (v) installations of all central services and utilities;

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

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

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

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

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

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 (ii) expenses agreed upon as common by all unit owners; and
2 (iii) expenses declared common by provisions of **[this act]**
3 P.L.1969, c.257 (C.46:8B-1 et seq.) or by the master deed or by the
4 bylaws.

5 f. "Common receipts" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (cf: P.L.1979, c.157, s.1)
14

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

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

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

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

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

47 (d) The association may acquire or enter into agreements
48 whereby it acquires leaseholds, memberships or other possessory or
49 use interests in lands or facilities including, but not limited to

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

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

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

46 If authorized by the master deed or bylaws, the association may
47 levy and collect a capital contribution, membership fee or other
48 charge upon the initial sale or subsequent resale of a unit, which
49 collection shall be earmarked for the purpose of maintenance of or

1 improvements to common elements to defray common expenses or
2 otherwise, provided that such charge shall not exceed nine times the
3 amount of the most recent monthly common expense assessment for
4 that unit.

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

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

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

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

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

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

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

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

42 (b) If the proceeds of such insurance shall be inadequate by a
43 substantial amount to cover the estimated cost of restoration of an
44 essential improvement or common element or if such damage shall
45 constitute substantially total destruction of the condominium
46 property or of one or more of the buildings comprising the
47 condominium property or if **【75%】** 75 percent of the unit owners
48 directly affected by such damage or destruction voting in
49 accordance with the procedures established by the by-laws shall

1 determine not to repair or restore, the association shall proceed to
2 realize upon the salvage value of that portion of the condominium
3 property so damaged or destroyed either by sale or such other
4 means as the association may deem advisable and shall collect the
5 proceeds of any insurance. Thereupon the net proceeds of such
6 sale, together with the net proceeds of such insurance shall be
7 considered as one fund to be divided among the unit owners directly
8 affected by such damage or destruction in proportion to their
9 respective undivided ownership of the common elements. Any
10 liens or encumbrances on any affected unit shall be relegated to the
11 interest in the fund of the unit owners.

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

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

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23 4. This act shall take effect immediately.

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STATEMENT

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