

[Second Reprint]

ASSEMBLY, No. 3851

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED APRIL 12, 2018

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

SYNOPSIS

Revises law relating to common interest communities.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 12, 2019, with amendments.



1 AN ACT concerning common interest communities, supplementing
2 Title 46 of the Revised Statutes ², and repealing various parts of
3 the statutory law².
4

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

8 1. An additional chapter, chapter 8E, is added to Title 46 of the
9 Revised Statutes as follows:
10

11 TITLE 46
12 CHAPTER 8E
13 ARTICLE 1
14 DEFINITIONS AND GENERAL PROVISIONS
15

16 46:8E-1. Short title.

17 This chapter shall be known and may be cited as the “New Jersey
18 Common Interest Ownership Act.”
19

20 46:8E-2. Definitions.

21 As used in this chapter:

22 ²["Affiliate of a declarant" means any person who controls, is
23 controlled by, or is under common control with a declarant. For
24 purposes of this definition:

25 a. a person controls a declarant if the person:

26 (1) is a general partner, officer, director, or employer of the
27 declarant;

28 (2) directly or indirectly or acting in concert with one or more
29 other persons, or through one or more subsidiaries, owns, controls,
30 holds with power to vote, or holds proxies representing, more than
31 20 percent of the voting interest in the declarant;

32 (3) controls in any manner the election of a majority of the
33 directors of the declarant; or

34 (4) has contributed more than 20 percent of the capital of the
35 declarant.

36 b. a person is controlled by a declarant if the declarant:

37 (1) is a general partner, officer, director, or employer of the
38 person;

39 (2) directly or indirectly or acting in concert with one or more
40 other persons, or through one or more subsidiaries, owns, controls,
41 holds with power to vote, or holds proxies representing, more than
42 20 percent of the voting interest in the person;

43 (3) controls in any manner the election of a majority of the
44 directors of the person; or

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHO committee amendments adopted December 5, 2019.

²Assembly AAP committee amendments adopted December 12, 2019.

1 (4) has contributed more than 20 percent of the capital of the
2 person. and

3 c. control does not exist if the powers described in this
4 paragraph are held solely as security for an obligation and are not
5 exercised.】²

6 “Allocated interests” means the following interests allocated to
7 each unit:

8 a. in a condominium, the undivided interest in the common
9 elements, the common expense liability, and votes in the
10 association;

11 b. in a cooperative, the common expense liability, the
12 ownership interest, and votes in the association; and

13 c. in a planned community, the common expense liability and
14 votes in the association.

15 “Assessment” means the sum attributable to each unit and due to
16 the association for common expenses.

17 “Association” or “unit owners association” means the entity
18 responsible for the administration of a common interest community,
19 which entity may be incorporated or unincorporated.

20 “Bylaws” means the instruments, however denominated, that
21 contain the procedures for conduct of the affairs of the association
22 regardless of the form in which the association is organized,
23 including any amendments to the instruments.

24 “Common elements” means:

25 a. in the case of:

26 (1) a condominium or cooperative, all portions of the common
27 interest community other than the units; and

28 (2) a planned community, any real estate within a planned
29 community which is owned or leased by the association, other than
30 a unit; and

31 b. in all common interest communities, any other interests in
32 real estate for the benefit of unit owners which are subject to the
33 declaration.

34 “Common expense liability” means the liability for common
35 expenses allocated to each unit pursuant N.J.S.46:8E-20.

36 “Common expenses” means expenditures made by, or financial
37 liabilities of, the association, together with any allocations to
38 reserves.

39 “Common interest community” means real estate described in a
40 declaration with respect to which a person is obligated by virtue of
41 unit ownership to pay for a share of:

42 a. real estate taxes;

43 b. insurance premiums;

44 c. maintenance; or

45 d. improvement of, or services or other expenses related to,
46 common elements, other units, or other real estate described in the
47 declaration.

1 Common interest community includes condominiums,
2 cooperatives, and any other real estate development composed of
3 individually owned property units and common property jointly
4 owned and managed by the unit owners as an association.

5 “Condominium” means a common interest community in which
6 portions of the real estate are designated for separate ownership and
7 the remainder of the real estate is designated for common ownership
8 solely by the owners of those portions. A common interest
9 community is not a condominium unless the undivided interests in
10 the common elements are vested in the unit owners.

11 “Cooperative” means a common interest community in which the
12 real estate is owned by an association, each member of which is
13 entitled by virtue of the member’s ownership interest in the
14 association to exclusive possession of a unit.

15 “Dealer” means a person in the business of selling units for the
16 person’s own account.

17 “Declarant” means any person or group of persons acting in
18 concert that:

19 a. as part of a common promotional plan, offers to dispose of
20 the interest of the person or group of persons in a unit not
21 previously disposed of;

22 b. reserves or succeeds to any special declarant right; or

23 c. applies for registration of a common interest community.

24 “Declaration” means the instrument, however denominated, that
25 creates a common interest community, including any amendments
26 to the instrument.

27 “Development rights” means any right or combination of rights
28 reserved by a declarant in the declaration to:

29 a. add real estate to a common interest community;

30 b. create units, common elements, or limited common elements
31 within a common interest community;

32 c. subdivide units or convert units into common elements; or

33 d. withdraw real estate from a common interest community.

34 “Dispose” means a voluntary transfer to a purchaser of any legal
35 or equitable interest in a unit, but the term does not include the
36 transfer or release of a security interest.

37 “Executive board” means the body, regardless of name,
38 designated in the declaration or bylaws to act on behalf of the
39 association.

40 “Identifying number” means a symbol or address that identifies
41 only one unit in a common interest community.

42 “Leasehold common interest community” means a common
43 interest community in which all or a portion of the real estate is
44 subject to a lease the expiration or termination of which will
45 terminate the common interest community or reduce its size.

46 “Limited common element” means a portion of the common
47 elements allocated by the declaration or by operation of subsections

1 b. or d. of N.J.S.46:8E-15 for the exclusive use of one or more but
2 fewer than all of the units.

3 “Master association” means an organization described in
4 N.J.S.46:8E-33.

5 “Offering” means an advertisement, inducement, solicitation, or
6 attempt to encourage a person to acquire an interest in a unit, other
7 than as security for an obligation. An advertisement in a newspaper
8 or other periodical of general circulation, or in a broadcast medium
9 to the general public, of a common interest community not located
10 in this State, is not an offering under this chapter if the
11 advertisement states that it is made in compliance with the law of
12 the jurisdiction in which the common interest community is located.

13 “Person” means an individual, corporation, business trust, estate,
14 trust, partnership, limited liability company, association, joint
15 venture, public corporation, government or governmental
16 subdivision, agency, or instrumentality, or any other legal or
17 commercial entity.

18 “Planned community” means a common interest community that
19 is not a condominium or a cooperative. A condominium or
20 cooperative may be part of a planned community.

21 “Proprietary lease” means an agreement with the association
22 pursuant to which a member is entitled to exclusive possession of a
23 unit in a cooperative.

24 “Purchaser” means a person, other than a declarant or a dealer,
25 who by means of a voluntary transfer acquires a legal or equitable
26 interest in a unit other than:

27 a. a leasehold interest, including renewal options, of less than
28 20 years; or

29 b. as security for an obligation.

30 “Real estate” means any leasehold or other estate or interest in,
31 over, or under land, including structures, fixtures, and other
32 improvements and interests that by custom, usage, or law pass with
33 a conveyance of land though not described in the contract of sale or
34 instrument of conveyance. The term includes parcels with or
35 without upper or lower boundaries and spaces that may be filled
36 with air or water.

37 “Record”, when used as a noun, means information that is
38 inscribed on a tangible medium or that is stored in an electronic or
39 other medium and is retrievable in perceivable form.

40 “Residential purposes” means use for dwelling purposes,
41 recreational purposes, or both.

42 “Rule” means a policy, guideline, restriction, procedure, or
43 regulation of an association, however denominated, which is not set
44 forth in the declaration or bylaws and which governs the conduct of
45 persons or the use or appearance of property.

46 “Security interest” means an interest in real estate or personal
47 property, created by contract or conveyance, which secures payment
48 or performance of an obligation. The term includes a lien created

1 by a mortgage, deed of trust, trust deed, security deed, contract for
2 deed, land sales contract, lease intended as security, assignment of
3 lease or rents intended as security, pledge of an ownership interest
4 in an association, and any other consensual lien or title retention
5 contract intended as security for an obligation.

6 “Special declarant rights” means rights reserved for the benefit
7 of a declarant to:

8 a. complete improvements indicated on plats and plans filed
9 with the declaration or, in a cooperative, to complete improvements
10 described in the public offering statement;

11 b. exercise any development right;

12 c. maintain sales offices, management offices, signs
13 advertising the common interest community, and models;

14 d. use easements through the common elements for the purpose
15 of making improvements within the common interest community or
16 within real estate which may be added to the common interest
17 community;

18 e. make the common interest community subject to a master
19 association;

20 f. merge or consolidate a common interest community with
21 another common interest community of the same form of ownership

22 g. appoint or remove any officer of the association or any
23 master association or any executive board member during any
24 period of declarant control;

25 h. control any construction, design review, or aesthetic
26 standards committee or process;

27 i. attend meetings of the unit owners and, except during an
28 executive session, the executive board; and

29 j. have access to the records of the association to the same
30 extent as a unit owner.

31 “Unit” means a physical portion of the common interest
32 community designated for separate ownership or occupancy, the
33 boundaries of which are described pursuant to paragraph (5) of
34 subsection a. of N.J.S.46:8E-18. If a unit in a cooperative is owned
35 by a unit owner or is sold, conveyed, voluntarily or involuntarily
36 encumbered, or otherwise transferred by a unit owner, the interest
37 in that unit which is owned, sold, conveyed, encumbered, or
38 otherwise transferred is the right to possession of that unit under a
39 proprietary lease, coupled with the allocated interests of that unit,
40 and the association’s interest in that unit is not thereby affected.

41 “Unit owner” means a declarant or other person that owns a unit,
42 or a lessee of a unit in a leasehold common interest community
43 whose lease expires simultaneously with any lease the expiration or
44 termination of which will remove the unit from the common interest
45 community, but does not include a person having an interest in a
46 unit solely as security for an obligation. In a condominium or
47 planned community, the declarant is the owner of any unit created
48 by the declaration. In a cooperative, the declarant is treated as the

1 owner of any unit to which allocated interests have been allocated
2 until that unit has been conveyed to another person.

3 As used in this definition, “unit ownership” does not include
4 holding a leasehold interest of less than 20 years in a unit, including
5 renewal options.

6

7 46:8E-3. No Variation by Agreement.

8 Except as expressly provided in this chapter, the effect of the
9 provisions of the chapter may not be varied by agreement, and
10 rights conferred by it may not be waived. Except as otherwise
11 provided, a declarant may not act under a power of attorney, or use
12 any other device, to evade the limitations or prohibitions of this
13 chapter, or the declaration.

14

15 46:8E-4. Separate titles and taxation.

16 a. In a condominium or planned community:

17 (1) ²~~【If there is a unit owner other than a declarant, each】~~ Each²
18 unit that has been created, together with its interest in the common
19 elements, constitutes for all purposes a separate parcel of real
20 estate.

21 (2) ²~~【If there is a unit owner other than a declarant, each】~~ Each²
22 unit shall be separately taxed and assessed, and no separate tax or
23 assessment may be rendered against common elements for which a
24 declarant has reserved no development rights.

25 b. Any portion of the common elements for which the declarant
26 has reserved a development right shall be separately taxed and
27 assessed against the declarant, and the declarant alone is liable for
28 payment of those taxes.

29 c. If there is no unit owner other than a declarant, the real
30 estate comprising the common interest community may be taxed
31 and assessed in any manner provided by law.

32

33 46:8E-5. Applicability of local ordinances, regulations and
34 building codes.

35 a. A local unit shall not impose a code requirement upon any
36 structure in a common interest community that differs from a code
37 requirement imposed upon an equivalent structure under a different
38 form of ownership.

39 b. In condominiums and cooperatives, no zoning, subdivision,
40 or other real estate use law, ordinance, or regulation may prohibit
41 the condominium or cooperative form of ownership or impose any
42 requirement upon a condominium or cooperative which it would not
43 impose upon a physically identical development under a different
44 form of ownership.

45 c. Except as provided in subsections a. and b. of this section,
46 the provisions of this chapter shall not invalidate or modify any
47 provision of any building code, zoning, subdivision, or other real

1 estate use law, ordinance, or rule, or regulation governing the use of
2 real estate.

3

4 46:8E-6. Eminent domain.

5 a. If a unit is acquired by eminent domain or part of a unit is
6 acquired by eminent domain leaving the unit owner with a remnant
7 that may not practically or lawfully be used for any purpose
8 permitted by the declaration, the award shall include compensation
9 to the unit owner for that unit and its allocated interests, whether or
10 not any common elements are acquired. Upon acquisition, unless
11 the judgment otherwise provides, that unit's allocated interests shall
12 be reallocated to the remaining units in proportion to the respective
13 allocated interests of those units before the taking, and the
14 association shall promptly prepare, execute, and record an
15 amendment to the declaration reflecting the reallocations. Any
16 remnant of a unit remaining after part of a unit is taken under this
17 subsection shall be a common element.

18 b. Except as provided in subsection a. of this section, if part of
19 a unit is acquired by eminent domain, the award shall compensate
20 the unit owner for the reduction in value of the unit and for the
21 reduction in value of the unit's allocated interests in the common
22 elements, whether or not any common elements are acquired. Upon
23 acquisition, unless the decree otherwise provides: (1) a unit's
24 allocated interests shall be reduced in proportion to the reduction in
25 the size of the unit, or on any other basis specified in the
26 declaration, and (2) the portion of the allocated interests divested
27 from a partially acquired unit shall be automatically reallocated to
28 that unit and to the remaining units in proportion to the respective
29 allocated interests of those units before the taking, with the
30 partially-acquired unit participating in the reallocation on the basis
31 of its reduced allocated interests.

32 c. If part of the common elements is acquired by eminent
33 domain, the portion of the award attributable to the common
34 elements taken shall be paid to the association. Unless the
35 declaration provides otherwise, any portion of the award
36 attributable to the acquisition of a limited common element shall be
37 divided among the owners of the units to which that limited
38 common element was allocated at the time of acquisition in
39 proportion to their rights in the limited common elements.

40 d. The Declaration of Taking or other document evidencing a
41 transfer of title to the condemning authority shall be recorded in
42 every county in which any portion of the common interest
43 community is located.

44

45 46:8E-7. Supplemental general principles of law applicable.

46 The principles of law and equity, including the law of
47 corporations, any other form of organization authorized by the law
48 of this State and unincorporated associations, the law of real estate,

1 and the law relative to capacity to contract, principal and agent,
2 eminent domain, estoppel, fraud, misrepresentation, duress,
3 coercion, mistake, receivership, substantial performance, or other
4 validating or invalidating cause supplement the provisions of this
5 chapter, except to the extent inconsistent with this chapter.

6
7 46:8E-8. Construction against implicit repeal.

8 This chapter, being a general act intended as a unified coverage
9 of its subject matter, no part of it shall be construed to be impliedly
10 repealed by subsequent legislation if that construction can
11 reasonably be avoided.

12
13 46:8E-9. Severability.

14 If any provision of this chapter or the application thereof to any
15 person or circumstance is held invalid, the invalidity shall not affect
16 other provisions or applications of this chapter which can be given
17 effect without the invalid provisions or application, and to this end
18 the provisions of this chapter are severable.

19
20 46:8E-10. Obligation of good faith.

21 Every contract or duty governed by this chapter imposes an
22 obligation of good faith in its performance or enforcement.

23
24 46:8E-11. Remedies to be liberally administered.

25 The remedies provided by this chapter shall be liberally
26 administered to the end that the aggrieved party is put in as good a
27 position as if the other party had fully performed.

28
29 46:8E-12. Relation to Electronic Signatures in Global and
30 National Commerce Act.

31 This chapter shall modify, limit, and supersede the federal
32 “Electronic Signatures in Global and National Commerce Act,” 15
33 U.S.C. s.7001, et seq., but do not modify, limit, or supersede
34 s.101(c) of that act, 15 U.S.C. s.7001(c), or authorize electronic
35 delivery of any of the notices described in s.103(b) of that act, 15
36 U.S.C. s.7003(b).

37
38 46:8E-13. Applicability to common interest communities.

39 a. Except as otherwise provided in this section, this chapter
40 shall apply to all common interest communities within the State.

41 b. This chapter shall not make any action taken before the
42 effective date of this chapter invalid or illegal.

43 c. If a common interest community was validly established
44 before the effective date ²of this chapter², ²this² chapter ²[8E
45 of this Title]² shall not require the community to file a declaration.

46 d. This chapter shall not alter the rights and responsibilities of
47 declarants of common interest communities established before the
48 effective date of this chapter.

1 e. ²**[**The "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et
2 seq.), "The Cooperative Recording Act of New Jersey," P.L.1987,
3 c.381 (C.46:8D-1 et al.), and² **]** "The Planned Real Estate
4 Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21
5 et seq.) shall continue to apply to the respective associations and
6 developers except to the extent that this chapter contains provisions
7 that conflict with ²**[**any of those acts² **]** that act², in which case the
8 terms of this chapter shall be controlling.

9 ²f. Unless the reference indicates otherwise, a statutory
10 reference to a condominium, cooperative, or other type of common
11 interest community formed under, or subject to, the "Condominium
12 Act," P.L.1969, c.257 (C.46:8B-1 et seq.), "The Cooperative
13 Recording Act of New Jersey," P.L.1987, c.381 (C.46:8D-1 et al.),
14 the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.),
15 or "The Planned Real Estate Development Full Disclosure Act,"
16 P.L.1977, c.419 (C.45:22A-21 et seq.), shall be construed to include
17 an equivalent type of common interest community, if formed under,
18 or subject to, this chapter.²

20 ARTICLE 2

21 CREATION, ALTERATION, AND TERMINATION OF 22 COMMON INTEREST COMMUNITIES

23
24 46:8E-14. Creation of common interest communities.

25 A common interest community may be created pursuant to this
26 chapter only by a declaration executed in the same manner as a
27 deed. The declaration shall be recorded in every county in which
28 any portion of the common interest community is located and shall
29 be indexed treating the common interest community as the grantee
30 and ²**[**the² **]** each person executing the declaration as the grantors.

31
32 46:8E-15. Unit boundaries.

33 ²**[**Except as provided by the declaration² **]** If the declaration does
34 not expressly provide for certain unit boundaries or the components
35 of units specified below, then²:

36 a. If walls, floors, or ceilings are designated as boundaries of a
37 unit, all lath, furring, wallboard, plasterboard, plaster, paneling,
38 tiles, wallpaper, paint, finished flooring, and any other materials
39 constituting any part of the finished surfaces thereof shall be a part
40 of the unit, and all other portions of the walls, floors, or ceilings
41 shall be a part of the common elements.

42 b. If any chute, flue, duct, wire, conduit, bearing wall, bearing
43 column, or any other fixture lies partially within and partially
44 outside the designated boundaries of a unit, any portion thereof
45 serving only that unit shall be a limited common element allocated
46 solely to that unit, and any portion thereof serving more than one

1 unit or any portion of the common elements shall be a part of the
2 common elements.

3 c. Subject to subsection b. of this section, all spaces, interior
4 partitions, and other fixtures and improvements within the
5 boundaries of a unit ²and all exterior doors and windows² shall be a
6 part of the unit.

7 d. Any shutters, awnings, window boxes, doorsteps, stoops,
8 porches, balconies, patios, and ²**[all exterior doors and windows or
9 other]**² fixtures designed to serve a single unit, but located outside
10 the unit's boundaries, shall be limited common elements allocated
11 exclusively to that unit.

12
13 46:8E-16. Construction and validity of declaration and bylaws.

14 a. All provisions of the declaration and bylaws shall be
15 severable.

16 b. ²**[Limitations on restraints on alienation shall only defeat
17 provisions of the declaration restricting sales or leasing of units if
18 they violate the "Law Against Discrimination," P.L.1945, c.169
19 (C.10:5-1 et seq.).**

20 c. ²**]** If a conflict exists between the declaration and the bylaws,
21 the declaration shall prevail except to the extent the declaration is
22 inconsistent with this chapter.

23 ²**[d.] c.**² Title to a unit and common elements shall not be
24 rendered unmarketable or otherwise be affected by reason of an
25 insubstantial failure of the declaration to comply with this chapter.
26 Whether a substantial failure impairs marketability is not affected
27 by this chapter.

28
29 46:8E-17. Description of units.

30 A description of a unit which sets forth the name of the common
31 interest community, the recording data for the declaration, and the
32 identifying number of the unit, shall be a legally sufficient
33 description of that unit and all rights, obligations, and interests
34 appurtenant to that unit which were created by the declaration or
35 bylaws.

36
37 46:8E-18. Contents of declaration.

38 a. The declaration shall contain:

39 (1) the names of the common interest community and the
40 association and a statement that the common interest community is
41 either a condominium, cooperative, or planned community;

42 (2) the name of every county in which any part of the common
43 interest community is situated;

44 (3) a legally sufficient description of the real estate included in
45 the common interest community;

46 (4) a statement of the maximum number of units that the
47 declarant reserves the right to create;

- 1 (5) in a condominium or planned community, a description of
2 the boundaries of each unit created by the declaration, including the
3 unit's identifying number or, in a cooperative, a description, which
4 may be by plats or plans, of each unit created by the declaration,
5 including the unit's identifying number, its size or number of
6 rooms, and its location within a building if it is within a building
7 containing more than one unit;
- 8 (6) a description of any limited common elements, other than
9 those specified in subsections b. and d. of N.J.S.46:8E-15, as
10 provided in paragraph (10) of subsection b. of N.J.S.46:8E-22 and,
11 in a planned community, any real estate that is or shall become
12 common elements;
- 13 (7) a description of any real estate, except real estate subject to
14 development rights, that may be allocated subsequently as limited
15 common elements, other than limited common elements specified in
16 subsections b. and d. of N.J.S.46:8E-15, together with a statement
17 that they may be so allocated;
- 18 (8) a description of any development right and other special
19 declarant rights reserved by the declarant, together with a legally
20 sufficient description of the real estate to which each of those rights
21 applies, and a time limit within which each of those rights shall be
22 exercised;
- 23 (9) if any development right may be exercised with respect to
24 different parcels of real estate at different times, a statement to that
25 effect together with:
- 26 (a) either a statement fixing the boundaries of those portions and
27 regulating the order in which those portions may be subjected to the
28 exercise of each development right or a statement that no
29 assurances are made in those regards; and
- 30 (b) a statement as to whether, if any development right is
31 exercised in any portion of the real estate subject to that
32 development right, that development right shall be exercised in all
33 or in any other portion of the remainder of that real estate;
- 34 (10) any other conditions or limitations under which the rights
35 described in paragraph (8) of this subsection may be exercised or
36 lapse;
- 37 (11) an allocation to each unit of the allocated interests in the
38 manner described in N.J.S.46:8E-20;
- 39 (12) any restrictions on alienation of the units, including any
40 restrictions on leasing which exceed the restrictions on leasing units
41 which executive boards may impose and on the amount for which a
42 unit may be sold or on the amount that may be received by a unit
43 owner on sale, condemnation, or casualty loss to the unit or to the
44 common interest community, or on termination of the common
45 interest community;
- 46 (13) the recording data for recorded easements and licenses
47 appurtenant to or included in the common interest community or to

1 which any portion of the common interest community is or may
2 become subject by virtue of a reservation in the declaration;

3 (14) any authorization pursuant to which the association may
4 establish and enforce construction and design criteria and aesthetic
5 standards;

6 (15) Provisions concerning reserves that:

7 (a) mandate that the association create and maintain reserves for
8 the replacement or repair of the common elements, together with a
9 statement of the basis on which those reserves are to be calculated
10 and funded; or

11 (b) allow that the association may, but is not required to, create
12 and maintain reserves;

13 (16) the bylaws; and

14 (17) all matters required by N.J.S.46:8E-19 through -22, and
15 N.J.S.46:8E-28 through -31.

16 b. The declaration may contain any other matters the declarant
17 considers appropriate, including any restrictions on the uses of a
18 unit or the number or other qualifications of persons who may
19 occupy units.

20

21 46:8E-19. Leasehold common interest communities.

22 a. Any lease the expiration or termination of which may
23 terminate the common interest community or reduce its size shall be
24 recorded. Every lessor of those leases in a condominium or planned
25 community shall sign the declaration. The declaration shall state:

26 (1) the recording data for the lease;

27 (2) the date on which the lease is scheduled to expire;

28 (3) a legally sufficient description of the real estate subject to
29 the lease;

30 (4) any right of the unit owners to redeem the reversion and the
31 manner whereby those rights may be exercised, or a statement that
32 they do not have those rights;

33 (5) any right of the unit owners to remove any improvements
34 within a reasonable time after the expiration or termination of the
35 lease, or a statement that they do not have those rights; and

36 (6) any rights of the unit owners to renew the lease and the
37 conditions of any renewal, or a statement that they do not have
38 those rights.

39 b. After the declaration for a leasehold condominium or
40 leasehold planned community is recorded, neither the lessor nor the
41 lessor's successor in interest may terminate the leasehold interest of
42 a unit owner who makes timely payment of a unit owner's share of
43 the rent and otherwise complies with all covenants which, if
44 violated, would entitle the lessor to terminate the lease. A unit
45 owner's leasehold interest in a condominium or planned community
46 is not affected by failure of any other person to pay rent or fulfill
47 any other covenant.

1 c. Acquisition of the leasehold interest of any unit owner by
2 the owner of the reversion or remainder does not merge the
3 leasehold and fee simple interests unless the leasehold interests of
4 all unit owners subject to that reversion or remainder are acquired.

5 d. If the expiration or termination of a lease decreases the
6 number of units in a common interest community, the allocated
7 interests shall be reallocated in accordance with subsection a. of
8 N.J.S.46:8E-6 as if those units had been taken by eminent domain.
9 Reallocations shall be confirmed by an amendment to the
10 declaration prepared, executed, and recorded by the association.

11

12 46:8E-20. Allocation of allocated interests.

13 a. The declaration shall allocate to each unit:

14 (1) in a condominium, a fraction or percentage of undivided
15 interests in the common elements and in the common expenses of
16 the association, and a portion of the votes in the association;

17 (2) in a cooperative, an ownership interest in the association, a
18 fraction or percentage of the common expenses of the association,
19 and a portion of the votes in the association; and

20 (3) in a planned community, a fraction or percentage of the
21 common expenses of the association, and a portion of the votes in
22 the association.

23 b. The declaration shall state the formulas used to establish
24 allocations of interests. Those allocations shall not discriminate in
25 favor of units owned by the declarant or an affiliate of the declarant.

26 c. If units shall be added to or withdrawn from the common
27 interest community, the declaration shall state the formulas to be
28 used to reallocate the allocated interests among all units included in
29 the common interest community after the addition or withdrawal.

30 d. The declaration ²~~may~~ shall² provide:

31 (1) that different allocations of votes shall be made to the units
32 on particular matters specified in the declaration;

33 (2) for cumulative voting only for the purpose of electing
34 members of the executive board; and

35 (3) for class voting on specified issues affecting the class if
36 necessary to protect valid interests of the class. A declarant may
37 not utilize cumulative or class voting for the purpose of evading any
38 limitation imposed on declarants by this chapter, nor may units
39 constitute a class because they are owned by a declarant.

40 e. Except for minor variations due to rounding, the sum of the
41 common expense liabilities and, in a condominium, the sum of the
42 undivided interests in the common elements allocated at any time to
43 all the units shall each equal one if stated as a fraction or 100
44 percent if stated as a percentage. In the event of discrepancy
45 between an allocated interest and the result derived from application
46 of the pertinent formula, the allocated interest prevails.

47 f. In a condominium, the common elements shall not be
48 subject to partition. Any purported conveyance, encumbrance,

1 judicial sale, or other voluntary or involuntary transfer of an
2 undivided interest in the common elements made without the unit to
3 which that interest is allocated shall be void.

4 g. In a cooperative, any purported conveyance, encumbrance,
5 judicial sale, or other voluntary or involuntary transfer of an
6 ownership interest in the association made without the possessory
7 interest in the unit to which that interest is related shall be void.

8

9 46:8E-21. Limited common elements.

10 a. Except for the limited common elements described in
11 subsections b. and d. of N.J.S.46:8E-15, the declaration shall
12 specify to which unit or units each limited common element is
13 allocated. An allocation shall not be altered without the consent of
14 the unit owners whose units are affected.

15 b. Except as the declaration otherwise provides, a limited
16 common element may be reallocated by an amendment to the
17 declaration executed by the unit owners between or among whose
18 units the reallocation is made. The persons executing the
19 amendment shall provide a copy thereof to the association, which
20 shall record it. The amendment shall be recorded in the names of
21 the parties and the common interest community.

22 c. A common element not previously allocated as a limited
23 common element may be so allocated only (1) pursuant to
24 provisions in the declaration made in accordance with paragraph (7)
25 of subsection a. of N.J.S.46:8E-18, or (2) if required by statute.
26 The allocations shall be made by amendments to the declaration.

27

28 46:8E-22. Plats and plans.

29 a. Plats and plans shall be a part of a declaration, and shall be
30 required for all common interest communities except cooperatives.
31 Separate plats and plans are not required by this chapter if all the
32 information required by this section is contained in either a plat or
33 plan. Each plat and plan shall be clear and legible and contain a
34 certification that the plat or plan contains all information required
35 by this section.

36 b. Each plat shall show or project:

37 (1) the name and a survey or general schematic map of the
38 entire common interest community;

39 (2) the location and dimensions of all real estate not subject to
40 development rights, or subject only to the development right to
41 withdraw, and the location and dimensions of all existing
42 improvements within that real estate;

43 (3) a legally sufficient description of any real estate subject to
44 development rights, labeled to identify the rights applicable to each
45 parcel, but plats and plans need not designate or label which
46 development rights are applicable to each parcel if that information
47 is clearly delineated in the declaration;

- 1 (4) the extent of any encroachments by or upon any portion of
2 the common interest community;
 - 3 (5) to the extent feasible, a legally sufficient description of all
4 easements serving or burdening any portion of the common interest
5 community;
 - 6 (6) except as otherwise provided in subsection h. of this section,
7 the approximate location and dimensions of any vertical unit
8 boundaries not shown or projected on plans recorded pursuant to
9 subsection d. of this section and that unit's identifying number;
 - 10 (7) except as otherwise provided in subsection h. of this section,
11 the approximate location with reference to an established datum of
12 any horizontal unit boundaries not shown or projected on plans
13 recorded pursuant to subsection d. of this section and that unit's
14 identifying number;
 - 15 (8) a legally sufficient description of any real estate in which the
16 unit owners shall own only an estate for years, labeled as leasehold
17 real estate;
 - 18 (9) the distance between non-contiguous parcels of real estate
19 comprising the common interest community;
 - 20 (10) the approximate location and dimensions of any porches,
21 decks, balconies, garages, or patios allocated as limited common
22 elements, and show or contain a narrative description of any other
23 limited common elements; and
 - 24 (11) for real estate not subject to development rights, all other
25 matters customarily shown on land surveys.
- 26 c. A plat may show the intended location and dimensions of a
27 contemplated improvement that may be constructed within the
28 common interest community. Any contemplated improvement
29 shown shall be labeled either **MUST BE BUILT** or **NEED NOT BE**
30 **BUILT**.
- 31 d. Except as otherwise provided in subsection h. of this section,
32 to the extent not shown or projected on the plats, plans of the units
33 shall show or project:
- 34 (1) the approximate location and dimensions of the vertical
35 boundaries of each unit, and that unit's identifying number;
 - 36 (2) the approximate location of any horizontal unit boundaries,
37 with reference to an established datum, and that unit's identifying
38 number; and
 - 39 (3) the approximate location of any units in which the declarant
40 has reserved the right to create additional units or common
41 elements, identified appropriately.
- 42 e. Unless a horizontal boundary of part of a unit located
43 outside a building has the same elevation as the horizontal boundary
44 of the inside part of the unit the plats and plans shall depict the
45 elevation.
- 46 f. Upon exercising any development right, the declarant shall
47 record either new plats and plans necessary to conform to the
48 requirements of subsections a., b., and d. of this section, or new

1 certifications of plats and plans previously recorded if those plats
2 and plans otherwise conform to the requirements of those
3 subsections.

4 g. A certification of a plat or plan required by this section, or
5 **1** [subsection b. of] **1** N.J.S.46:8E-14, shall be made in accordance
6 with N.J.S.46:26B-1 et al. by **1** the **1** person who is legally authorized
7 to practice land surveying in this State as provided by P.L.1938,
8 c.342 (C.45:8-27 et seq.).

9 h. Plats and plans need not show the location and dimensions
10 of the units' boundaries or their limited common elements if:

11 (1) the plat shows the location and dimensions of all buildings
12 containing or comprising the units; and

13 (2) the declaration includes other information that shows or
14 contains a narrative description of the general layout of the units in
15 those buildings and the limited common elements allocated to those
16 units.

17

18 46:8E-23. Exercise of development rights.

19 a. To exercise any development right reserved under paragraph
20 (8) of subsection a. of N.J.S.46:8E-18, the declarant shall prepare,
21 execute, and record an amendment to the declaration pursuant to
22 N.J.S.46:8E-30 and in a condominium or planned community
23 comply with N.J.S.46:8E-22. The declarant is the unit owner of any
24 units thereby created. The amendment to the declaration shall
25 assign an identifying number to each new unit created, and, except
26 in the case of subdivision or conversion of units described in
27 subsection b. of this section, reallocate the allocated interests
28 among all units. The amendment shall describe any common
29 elements and any limited common elements thereby created and, in
30 the case of limited common elements, designate the unit to which
31 each is allocated to the extent required by N.J.S.46:8E-21.

32 b. Development rights may be reserved within any real estate
33 added to the common interest community if the amendment adding
34 that real estate includes all matters required by N.J.S.46:8E-18 or
35 N.J.S.46:8E-19, as the case may be, and, in a condominium or
36 planned community, the plats and plans include all matters required
37 by N.J.S.46:8E-22. This provision does not extend the time limit on
38 the exercise of development rights imposed by the declaration
39 pursuant to paragraph (8) of subsection a. of N.J.S.46:8E-18.

40 c. Whenever a declarant exercises a development right to
41 subdivide or convert a unit previously created into additional units,
42 common elements, or both:

43 (1) if the declarant converts the unit entirely to common
44 elements, the amendment to the declaration shall, pursuant to
45 N.J.S.46:8E-6, reallocate all the allocated interests of that unit
46 among the other units as if that unit had been taken by eminent
47 domain; and

1 (2) if the declarant subdivides the unit into two or more units,
2 whether or not any part of the unit is converted into common
3 elements, the amendment to the declaration shall reallocate all the
4 allocated interests of the unit among the units created by the
5 subdivision in any reasonable manner prescribed by the declarant.

6 d. If the declaration provides, pursuant to paragraph (8) of
7 subsection a. of N.J.S.46:8E-18, that all or a portion of the real
8 estate is subject to a right of withdrawal:

9 (1) if all the real estate is subject to withdrawal, and the
10 declaration does not describe separate portions of real estate subject
11 to that right, none of the real estate may be withdrawn after a unit
12 has been conveyed to a purchaser; and

13 (2) if any portion is subject to withdrawal, it may not be
14 withdrawn after a unit in that portion has been conveyed to a
15 purchaser.

16

17 46:8E-24. Alterations of units.

18 Subject to the provisions of the declaration and other provisions
19 of law, a unit owner:

20 a. may make any improvements or alterations to the owner's
21 unit that do not impair the structural integrity or mechanical
22 systems or lessen the support of any portion of the common interest
23 community;

24 b. may not change ²[the appearance of the common elements,
25 or]² the exterior appearance of a unit ²[or any other portion of the
26 common interest community]² , without permission of the
27 association;

28 c. ²may not change the appearance of the common elements or
29 other portion of the common interest community, without the
30 permission of the association;

31 d. in a planned community or part of a common interest
32 community without adjoining units, where the units were
33 constructed pursuant to a common architectural scheme or design,
34 or contained restrictions in the declaration or bylaws limiting the
35 units to certain colors or design schemes, the exterior appearance of
36 a unit may not be changed without permission of the association;

37 e.² after acquiring an adjoining unit or an adjoining part of an
38 adjoining unit, may remove or alter any intervening partition or
39 create apertures therein, even if the partition in whole or in part is a
40 common element, if those acts do not impair the structural integrity
41 or mechanical systems or lessen the support of any portion of the
42 common interest community. Removal of partitions or creation of
43 apertures under this paragraph shall not be an alteration of
44 boundaries.

45

46 46:8E-25. Relocation of unit boundaries.

1 a. Subject to the provisions of the declaration and other
2 provisions of law, the boundaries between adjoining units may be
3 relocated by an amendment to the declaration upon application to
4 the association by the owners of those units. If the owners of the
5 adjoining units have specified a reallocation between their units of
6 their allocated interests, the application shall state the proposed
7 reallocations. Unless the executive board determines, within 30
8 days, that the reallocations are unreasonable, the association shall
9 prepare an amendment that identifies the units involved and states
10 the reallocations. The amendment shall be executed by those unit
11 owners, contain words of conveyance between them, and, on
12 recordation, be indexed in the name of the grantor and the grantee,
13 and in the name of the association.

14 b. Subject to the provisions of the declaration and other
15 provisions of law, boundaries between units and common elements
16 may be relocated to incorporate common elements within a unit by
17 an amendment to the declaration upon application to the association
18 by the owner of the unit who proposes to relocate a boundary.
19 Unless the declaration provides otherwise, the amendment may be
20 approved only if persons entitled to cast at least 67 percent of the
21 votes in the association, including 67 percent of the votes allocated
22 to units not owned by the declarant, agree to the action. The
23 amendment may describe any fees or charges payable by the owner
24 of the affected unit in connection with the boundary relocation and
25 the fees and charges are assets of the association. The amendment
26 shall be executed by the unit owner of the unit whose boundary is
27 being relocated and by the association, contain words of
28 conveyance between them, and on recordation be indexed in the
29 name of the unit owner and the association as grantor or grantee, as
30 appropriate.

31 c. The association (1) in a condominium or planned community
32 shall prepare and record plats or plans necessary to show the altered
33 boundaries of affected units, and their dimensions and identifying
34 numbers, and (2) in a cooperative shall prepare and record
35 amendments to the declaration, including any plans necessary to
36 show or describe the altered boundaries of affected units, and their
37 dimensions and identifying numbers.

38

39 46:8E-26. Subdivision of units.

40 a. If the declaration expressly so permits, a unit may be
41 subdivided into two or more units. Subject to the declaration and
42 law other than this chapter, upon application of a unit owner to
43 subdivide a unit, the association shall prepare, execute, and record
44 an amendment to the declaration including, in a condominium or
45 planned community, the plats and plans subdividing that unit.

46 b. The amendment to the declaration shall be executed by the
47 owner of the unit to be subdivided, assign an identifying number to
48 each unit created, and reallocate the allocated interests formerly

1 allocated to the subdivided unit to the new units in any reasonable
2 manner prescribed by the owner of the subdivided unit or on any
3 other basis the declaration requires.

4

5 46:8E-27. Monuments as boundaries.

6 The existing physical boundaries of a unit or the physical
7 boundaries of a unit reconstructed in substantial accordance with
8 the description contained in the original declaration shall be the
9 unit's legal boundaries, rather than the boundaries derived from the
10 description contained in the original declaration, regardless of
11 vertical or lateral movement of the building or minor variance
12 between those boundaries and the boundaries derived from the
13 description contained in the original declaration. This section shall
14 not relieve a unit owner of liability in case of the unit owner's
15 willful misconduct or relieve a declarant or any other person of
16 liability for failure to adhere to any plats and plans or, in a
17 cooperative, to any representation in the public offering statement.

18

19 46:8E-28. Use for sales purposes.

20 A declarant may maintain sales offices, management offices, and
21 models in units or on common elements in the common interest
22 community only if the declaration so provides and specifies the
23 rights of the declarant with regard to the number, size, location, and
24 relocation thereof. In a cooperative or condominium, any sales
25 office, management office, or model not designated a unit by the
26 declaration shall be a common element. If a declarant ceases to be
27 a unit owner, then the declarant ceases to have any rights with
28 regard to the offices and models unless the declarant promptly
29 removes them from the common interest community in accordance
30 with a right to remove reserved in the declaration. Subject to any
31 limitations in the declaration, a declarant may maintain signs on the
32 common elements advertising the common interest community.
33 This section is subject to the provisions of other State law and to
34 local ordinances.

35

36 46:8E-29. Easement and use rights.

37 a. Subject to the declaration, a declarant shall have an
38 easement through the common elements as may be reasonably
39 necessary for the purpose of discharging the declarant's obligations
40 or exercising special declarant rights, whether arising under this
41 chapter, or reserved in the declaration.

42 b. Subject to ²the declaration, or provisions of the² community
43 association ²regulation rules or regulations² on the use,
44 maintenance, repair, replacement, and modification of common
45 elements the unit owners shall have an easement in the common
46 elements for access to their units.

47 c. Subject to the declaration and rules, the unit owners shall
48 have a right to use the common elements that are not limited

1 common elements and all real estate that shall become common
2 elements for the purposes for which they were intended.

3

4 46:8E-30. Amendment of declaration.

5 a. (1) ²~~【The】~~ Subject to the² declaration, ²the declaration,²
6 including any plats and plans, may be amended only by vote or
7 agreement of ²~~【unit owners of units】~~ votes² representing at least 67
8 percent of ²~~【a quorum of the members, which】~~ the allocated votes
9 present in person, by proxy, absentee ballot or electronic ballot
10 where the² quorum shall not be less than 50 percent of the
11 ²~~【membership in the】~~ allocated votes in the² association qualified
12 to vote.

13 (2) The limitations of paragraph (1) of this subsection shall not
14 apply in cases of amendments that are executed by:

15 (a) a declarant under subsection f. of N.J.S.46:8E-22, or under
16 N.J.S.46:8E-23;

17 (b) the association under N.J.S.46:8E-6, subsection d. of
18 N.J.S.46:8E-19, subsection ¹~~【d.】~~ c.¹ of N.J.S.46:8E-21, subsection
19 a. of N.J.S.46:8E-25, or N.J.S.46:8E-26;

20 (c) certain unit owners under subsection b. of N.J.S.46:8E-21,
21 subsection a. of N.J.S.46:8E-25, subsection b. of N.J.S.46:8E-26, or
22 subsection b. of N.J.S.46:8E-31; or

23 (d) the executive board to render an inconsistent portion of the
24 declaration to be consistent with applicable law.

25 b. Notwithstanding any provision of section 4 of P.L.1993, c.30
26 (C.45:22A-46) to the contrary, ²with respect to any common
27 interest community created after the effective date of this chapter,²
28 within 24 months following²~~【assumption by the owners of control~~
29 ~~of the executive board】~~ the earlier of the conveyance of title to the
30 last unit in the common interest community or, except where the
31 declaration provides that the common interest community may
32 consist of more than 750 units, 10 years following the sale of the
33 first unit in the common interest community², the executive board
34 shall re-examine the bylaws, declaration and rules of the association
35 and present proposed amendments as the executive board may deem
36 appropriate, as well as amendments proposed by initiative signed by
37 persons eligible to cast at least 20 percent of the votes, for approval
38 by vote of the unit owners. Any proposed amendment shall be
39 unambiguous and consistent with applicable law and with the
40 provisions of the governing documents that are not proposed to be
41 amended. Notwithstanding the terms of a declaration or bylaws, an
42 amendment to an existing bylaw, rule, or declaration, and subject to
43 the limitations expressed in subsection c. of this section, an
44 amendment may be adopted by the lesser of: (1) a majority of
45 ²~~【votes that are entitled to be cast by all unit owners】~~ the voting
46 interest in the association²; or (2) 67 percent of the ²~~【votes】~~ voting
47 interest² actually cast, provided not less than a majority of the

1 eligible votes have been cast. At least 30 days advance notice of
2 any referendum, including the text of any new bylaw or amendment
3 or repeal of an existing provision to be voted on, shall be given to
4 all unit owners by registered or certified mail, by personal delivery,
5 or where the unit owner consents, by electronic communication.

6 c. (1) A proposed amendment shall not reduce the boundaries
7 of a unit or the unit's limited common elements without consent of
8 that unit owner.

9 (2) A proposed amendment shall not violate a clear mandate of
10 public policy.

11 (3) A proposed amendment that seeks to prohibit a previously
12 permitted use of a unit shall provide reasonable protection for a use
13 or occupancy permitted at the time the amendment was adopted.
14 An amendment that seeks to prohibit a previously permitted use in a
15 unit, shall require approval by a vote of at least 67 percent of the
16 total allocated votes in the association.

17 (4) Except to the extent expressly permitted or required by other
18 provisions of this chapter, an amendment shall not create or
19 increase special declarant rights, ²or except as permitted by the
20 declaration² increase the number of units or change the boundaries
21 of any unit or the allocated interests of a unit in the absence of
22 unanimous consent of the unit owners.

23 (5) The time limits specified in a declaration within which a
24 declarant's reserved development rights may be exercised, and
25 within which additional development rights may be created, shall be
26 extended only if at least 80 percent of the votes in the association,
27 including 80 percent of the votes allocated to units not owned by
28 the declarant, agree to that action. ²**[A vote authorizing an**
29 **extention of the time limits shall be effective 30 days after the date**
30 **of recording an amendment to the declaration memorializing the**
31 **vote, unless all the persons holding the affected special declarant**
32 **rights or security interest in those rights:**

33 (a) record a written objection within that 30-day period, in
34 which case the amendment shall be void; or

35 (b) consent in writing at the time the amendment is recorded, in
36 which case the amendment shall be effective when recorded. **]²**

37 d. An action to challenge the validity of an amendment adopted
38 by an association pursuant to this section, other than an action by a
39 governmental official or entity authorized to do so by statute or
40 regulation adopted pursuant to statute, shall not be brought more
41 than one year after the amendment is recorded.

42 e. An amendment to a declaration shall be recorded in every
43 county in which any portion of the common interest community is
44 located and shall be effective only upon recordation. An
45 amendment, except an amendment pursuant to subsection a. of
46 N.J.S.46:8E-25, shall be indexed in the name of the common
47 interest community and the association as grantees and in the name
48 of the parties executing the amendment as grantors. Amendments

1 to the declaration required to be recorded by the association shall be
2 prepared, executed, recorded, and certified on behalf of the
3 association by any officer of the association designated for that
4 purpose or, in the absence of designation, by the president of the
5 association.

6 f. If the declaration of a common interest community, whether
7 created before or after the effective date of P.L. c. (N.J.S.)
8 (pending before the Legislature as this bill), requires the consent of
9 a person holding a security interest in a unit as a condition to the
10 effectiveness of an amendment to the declaration, that consent shall
11 be granted if no written refusal to consent is received by the
12 association within 60 days after the association delivers notice of
13 the proposed amendment to the holder of the security interest or
14 mails the notice to the holder of the security interest by certified
15 mail, return receipt requested. The association may rely on the last-
16 recorded security interest of record in delivering or mailing notice
17 to the holder of that interest.

18 g. If the declaration of a common interest community, whether
19 created before or after the effective date of P.L. c. (N.J.S.)
20 (pending before the Legislature as this bill), contains a provision
21 requiring amendments to be adopted only by the vote or agreement
22 of unit owners of units to which more than 80 percent of the votes
23 in the association are allocated, a proposed amendment shall be
24 deemed approved if:

25 (1) (a) unit owners of units to which at least 80 percent of the
26 votes in the association are allocated vote for or agree to the
27 proposed amendment;

28 (b) no unit owner votes against the proposed amendment; and

29 (c) notice of the proposed amendment is delivered to the unit
30 owners holding the votes in the association that have not voted or
31 agreed to the proposed amendment and no written objection to the
32 proposed amendment is received by the association within 30 days
33 after the association delivers notice; or

34 (2) Unit owners of units to which at least 80 percent of the votes
35 in the association are allocated vote for or agree to the proposed
36 amendment, but at least one unit owner objects to the proposed
37 amendment and, pursuant to an action brought by the association in
38 the Superior Court against all objecting unit owners, the court finds
39 that the objecting unit owners do not have a unique minority
40 interest, different in kind from the interests of the unit owners, that
41 the voting requirement of the declaration is intended to protect.

42

43 46:8E-31. Termination of common interest community.

44 a. Except for a taking of all the units by eminent domain,
45 foreclosure against an entire cooperative of a security interest that
46 has priority over the declaration, or in the circumstances described
47 in N.J.S.46:8E-37, a common interest community may be
48 terminated ², or a portion of the common interest community may be

1 removed from the common interest community,² only by agreement
2 of unit owners of units to which at least 80 percent of the votes in
3 the association are allocated, or any larger percentage the
4 declaration specifies, and with any other approvals required by the
5 declaration. The declaration may specify a smaller percentage only
6 if all of the units are restricted exclusively to nonresidential uses.

7 b. An agreement to terminate shall be evidenced by the
8 execution of a termination agreement, or ratifications of the
9 agreement, in the same manner as a deed, by the requisite number
10 of unit owners. A termination agreement and all ratifications of it
11 shall be recorded in every county in which a portion of the common
12 interest community is situated and shall be effective only upon
13 recordation.

14 c. Except as provided in subsection d. of this section, a
15 termination agreement shall provide that all of the common
16 elements and units of the common interest community shall be sold
17 following termination and shall set forth the minimum terms of the
18 sale.

19 d. If a unit meets zoning and planning requirements as an
20 independent parcel of real estate at the time of termination, a
21 termination agreement shall provide that the owner may retain
22 ownership of that unit.

23 e. An association, on behalf of the unit owners, may contract
24 for the sale of real estate in a common interest community, but the
25 contract shall not be binding on the unit owners until approved
26 pursuant to subsection a. of this section. Upon termination, the
27 assets of the association, title to real estate and proceeds shall vest
28 in the association as trustee for the holders of all interests in the
29 units. Until a sale has been concluded and the proceeds distributed,
30 the association shall continue in existence with all powers it had
31 before termination.

32 f. On termination of the common interest community,
33 proceeds, after payment of valid liens, shall be paid to unit owners
34 in proportion to the fair market value immediately before
35 termination of their units including the value of allocated interests
36 and limited common elements.

37 g. Following termination of a condominium or planned
38 community, creditors of the association holding liens on the units,
39 which were docketed before termination, may enforce those liens in
40 the same manner as any lien holder. Any other creditor of the
41 association shall be treated as if the creditor had perfected a lien on
42 the units immediately before termination.

43 h. In a cooperative, a declaration may provide that all creditors
44 of the association shall have priority over any interests of unit
45 owners and creditors of unit owners. In that event, following
46 termination, creditors of the association holding liens on the
47 cooperative which were docketed before termination may enforce
48 their liens in the same manner as any lien holder. Any other

1 creditor of the association shall be treated as if the creditor had
2 perfected a lien against the cooperative immediately before
3 termination. Unless the declaration provides that all creditors of the
4 association have that priority:

5 (1) the lien of each creditor of the association which was
6 perfected against the association before termination shall become,
7 upon termination, a lien against each unit owner's interest in the
8 unit as of the date the lien was perfected;

9 (2) any other creditor of the association shall be treated upon
10 termination as if the creditor had perfected a lien against each unit
11 owner's interest immediately before termination;

12 (3) the amount of the lien of an association's creditor described
13 in paragraphs (1) and (2) against each of the unit owners' interest
14 shall be proportionate to the ratio which each unit's common
15 expense liability bears to the common expense liability of all of the
16 units;

17 (4) the lien of each creditor of each unit owner which was
18 perfected before termination shall continue as a lien against that
19 unit owner's unit as of the date the lien was perfected;

20 (5) the assets of the association shall be distributed to all unit
21 owners and all lien holders as their interests may appear in the order
22 described in this subsection; and

23 (6) creditors of the association shall not be entitled to payment
24 from a unit owner in excess of the amount of the creditor's lien
25 against that unit owner's interest.

26 i. In a condominium or planned community, except as
27 otherwise provided in paragraph (l) of subsection h. of this section,
28 foreclosure or enforcement of a lien or encumbrance against the
29 entire common interest community shall not terminate, of itself, the
30 common interest community, and foreclosure or enforcement of a
31 lien or encumbrance against a portion of the common interest
32 community, other than withdrawable real estate, shall not withdraw
33 that portion from the common interest community. Foreclosure or
34 enforcement of a lien or encumbrance against withdrawable real
35 estate, or against common elements that have been subjected to a
36 security interest by the association, shall not withdraw, of itself,
37 that real estate from the common interest community, but the person
38 taking title thereto may require from the association, upon request,
39 an amendment excluding the real estate from the common interest
40 community.

41 j. In a condominium or planned community, if a lien or
42 encumbrance against a portion of the real estate comprising the
43 common interest community has priority over the declaration and
44 the lien or encumbrance has not been partially released, the parties
45 foreclosing the lien or encumbrance, upon foreclosure, may record
46 an instrument excluding the real estate subject to that lien or
47 encumbrance from the common interest community.

1 46:8E-32. Rights of secured lenders.

2 a. The declaration may require that all or a specified number or
3 percentage of the lenders who hold security interests encumbering
4 units, or who have extended credit to the association, approve
5 specified actions of the unit owners or the association as a condition
6 to the effectiveness of those actions, but no requirement for
7 approval may operate to:

8 (1) deny or delegate control over the general administrative
9 affairs of the association by the unit owners or the executive board,

10 (2) prevent the association or the executive board from
11 commencing, intervening in, or settling any litigation or
12 proceeding, or

13 (3) prevent any insurance trustee or the association from
14 receiving and distributing any insurance proceeds.

15 b. A lender who has extended credit to an association secured
16 by an assignment of income or an encumbrance on the common
17 elements may enforce its security agreement in accordance with its
18 terms, subject to the requirements of this chapter, and other law.
19 Requirements that the association shall deposit its periodic common
20 charges before default with the lender to which the association's
21 income has been assigned, or increase its common charges at the
22 lender's direction by amounts reasonably necessary to amortize the
23 loan in accordance with its terms, shall not violate the prohibitions
24 on lender approval contained in subsection a. of this section.

25

26 46:8E-33. Master associations.

27 a. If the declaration provides that any of the powers of the unit
28 owners association, also referred to as the association under this
29 chapter, are to be exercised by or may be delegated to a profit or
30 nonprofit corporation that exercises those or other powers on behalf
31 of one or more common interest communities or for the benefit of
32 the unit owners of one or more common interest communities, all
33 provisions of this chapter applicable to unit owners' associations
34 shall apply to any such corporation or unincorporated association,
35 except as modified by this section.

36 b. Unless it is acting in the capacity of an unit owners
37 association, a master association may exercise powers over budgets
38 and finances only to the extent expressly permitted in the
39 declarations of the common interest communities that are part of the
40 master association or expressly described in the delegations of
41 power from those common interest communities to the master
42 association.

43 c. If the declaration of any common interest community
44 provides that the executive board may delegate certain powers to a
45 master association, the members of the executive board shall not be
46 liable for the acts or omissions of the master association with
47 respect to those powers following delegation.

1 d. The rights and responsibilities of unit owners with respect to
2 the unit owners' association shall apply in the conduct of the affairs
3 of a master association only to persons who elect the board of a
4 master association, whether or not those persons are otherwise unit
5 owners within the meaning of this chapter.

6 e. Even if a master association is also a unit owners
7 association, the certificate of incorporation or other instrument
8 creating the master association and the declaration of each common
9 interest community, the powers of which are assigned by the
10 declaration or delegated to the master association, may provide that
11 the executive board of the master association shall be elected after
12 the period of declarant control in any of the following ways:

13 (1) All unit owners of all common interest communities subject
14 to the master association may elect all members of the master
15 association's executive board.

16 (2) All members of the executive boards of all common interest
17 communities subject to the master association may elect all
18 members of the master association's executive board.

19 (3) All unit owners of each common interest community subject
20 to the master association may elect specified members of the master
21 association's executive board.

22 (4) All members of the executive board of each common interest
23 community subject to the master association may elect specified
24 members of the master association's executive board.

25

26 46:8E-34. Merger or consolidation of common interest
27 communities.

28 a. Any two or more common interest communities of the same
29 form of ownership, by agreement of the unit owners as provided in
30 subsection b. of this section, may be merged or consolidated into a
31 single common interest community. In the event of a merger or
32 consolidation, unless the agreement otherwise provides, the
33 resultant common interest community shall be the legal successor,
34 for all purposes, of the pre-existing common interest communities,
35 and the operations and activities of the associations of the pre-
36 existing common interest communities shall be merged or
37 consolidated into a single association that holds all powers, rights,
38 obligations, assets, and liabilities of all pre-existing associations.

39 b. ²**[An]** Subject to the declaration, an² agreement of two or
40 more common interest communities to merge or consolidate
41 pursuant to subsection a. of this section shall be evidenced by an
42 agreement prepared, executed, recorded, and certified by the
43 president of the association of each of the pre-existing common
44 interest communities following approval by ²**[owners of units to**
45 which are allocated the percentage of votes] 67 percent of the
46 allocated votes qualified to vote² in each common interest
47 community ²**[required to terminate that common interest**

1 community¹].² The agreement shall be recorded in every county in
2 which a portion of the common interest community is located and
3 shall not be effective until recorded.

4 c. Every merger or consolidation agreement shall provide for
5 the reallocation of the allocated interests in the new association
6 among the units of the resultant common interest community either:

7 (1) by stating the reallocations or the formulas upon which they
8 are based, or

9 (2) by stating the percentage of overall allocated interests of the
10 new common interest community which are allocated to all of the
11 units comprising each of the pre-existing common interest
12 communities, and providing that the portion of the percentages
13 allocated to each unit formerly comprising a part of the pre-existing
14 common interest community shall be equal to the percentages of
15 allocated interests allocated to that unit by the declaration of the
16 pre-existing common interest community.

17

18 46:8E-35. Addition of unspecified real estate.

19 In a planned community, if the right to add real estate is
20 originally reserved in the declaration, the declarant in addition to
21 any other development right, may amend the declaration at any time
22 during as many years as are specified in the declaration for adding
23 additional real estate to the planned community without describing
24 the location of that real estate in the original declaration; but, the
25 amount of real estate added to the planned community pursuant to
26 this section may not exceed 10 percent of the real estate described
27 in paragraph (3) of subsection a. of N.J.S.46:8E-18, and the
28 declarant may not in any event increase the number of units in the
29 planned community beyond the number stated in the original
30 declaration pursuant to paragraph (5) of subsection a. of
31 N.J.S.46:8E-18.

32

33 46:8E-36. Master planned communities.

34 a. The declaration for a common interest community may state
35 that it is a master planned community if the declarant has reserved
36 the development right to create at least 300 units that may be used
37 for residential purposes and has obtained preliminary site plan or
38 subdivision approval permitting the declarant to construct at least
39 300 residential units pursuant to the "Municipal Land Use Law,"
40 P.L.1975, c.291 (C.40:55D-1 et seq.).

41 b. If the requirements of subsection a. of this section are
42 satisfied, the declaration for the master planned community need
43 not state a maximum number of units and need not contain any of
44 the information required by paragraphs (3) through (14) of
45 subsection a. of N.J.S.46:8E-18 until the declaration is amended
46 under subsection c. of this section.

47 c. When each unit in a master planned community is conveyed
48 to a purchaser, the declaration shall contain:

1 (1) a sufficient legal description of the unit and all portions of
2 the master planned community in which any other units have been
3 conveyed to a purchaser; and

4 (2) all the information required by paragraphs (3) through (14)
5 of subsection a. of N.J.S.46:8E-18 with respect to that real estate.

6 d. Notwithstanding any other provision of this chapter:

7 (1) the only real estate in a master planned community which
8 shall be subject to this chapter is that which comprises:

9 (a) units that have been declared or which are being offered for
10 sale; and

11 (b) real estate described pursuant to subsection c. of this section;

12 (2) other real estate that is or may become part of the master
13 planned community shall be subject only to other applicable laws
14 and to any other restrictions and limitations that appear of record;
15 and

16 (3) if the public offering statement conspicuously identifies the
17 community as a master planned community, the disclosure
18 requirements shall apply only with respect to units that have been
19 declared or are being offered for sale in connection with the public
20 offering statement and to the real estate described in subsection c.
21 of this section.

22 e. Limitations in this chapter on the addition of unspecified
23 real estate shall not apply to a master planned community.

24 f. The period of declarant control of the association for a
25 master planned community shall terminate in accordance with
26 conditions specified in the declaration or otherwise at the time the
27 declarant, in a recorded instrument and after giving notice in a
28 record to all the unit owners, voluntarily surrenders all rights to
29 control the activities of the association.

30

31 46:8E-37. Termination following catastrophe.

32 If substantially all the units in a common interest community
33 have been destroyed or are uninhabitable and the available methods
34 for giving notice of a meeting of unit owners to consider
35 termination under N.J.S.46:8E-31 are unlikely to provide adequate
36 notice, the executive board or any other interested person may
37 commence an action seeking to terminate the common interest
38 community. During the pendency of the action, the court may issue
39 whatever orders it considers appropriate, including appointment of a
40 receiver. After a hearing, the court may terminate the common
41 interest community or reduce its size and may issue any other order
42 the court considers to be in the best interest of the unit owners and
43 persons holding an interest in the common interest community.

44 ¹The payment of proceeds of any sale or other disposition of the
45 property in a common interest community shall be as follows:

46 a. On termination of the common interest community,
47 proceeds, after payment of valid liens, shall be paid to unit owners
48 in proportion to the fair market value immediately before

1 termination of their units including the value of allocated interests
2 and limited common elements;

3 b. Following termination of a condominium or planned
4 community, creditors of the association holding liens on the units,
5 which were docketed before termination, may enforce those liens in
6 the same manner as any lien holder. Any other creditor of the
7 association shall be treated as if the creditor had perfected a lien on
8 the units immediately before termination;

9 c. In a cooperative, a declaration may provide that all creditors
10 of the association shall have priority over any interests of unit
11 owners and creditors of unit owners. In that event, following
12 termination, creditors of the association holding liens on the
13 cooperative which were docketed before termination may enforce
14 their liens in the same manner as any lien holder. Any other
15 creditor of the association shall be treated as if the creditor had
16 perfected a lien against the cooperative immediately before
17 termination. Unless the declaration provides that all creditors of the
18 association have that priority:

19 (1) the lien of each creditor of the association which was
20 perfected against the association before termination shall become,
21 upon termination, a lien against each unit owner's interest in the
22 unit as of the date the lien was perfected;

23 (2) any other creditor of the association shall be treated upon
24 termination as if the creditor had perfected a lien against each unit
25 owner's interest immediately before termination;

26 (3) the amount of the lien of an association's creditor described
27 in paragraphs (1) and (2) against each of the unit owners' interest
28 shall be proportionate to the ratio which each unit's common
29 expense liability bears to the common expense liability of all of the
30 units;

31 (4) the lien of each creditor of each unit owner which was
32 perfected before termination shall continue as a lien against that
33 unit owner's unit as of the date the lien was perfected;

34 (5) the assets of the association shall be distributed to all unit
35 owners and all lien holders as their interests may appear in the order
36 described in this subsection; and

37 (6) creditors of the association shall not be entitled to payment
38 from a unit owner in excess of the amount of the creditor's lien
39 against that unit owner's interest.¹

40

41 ²2. The following sections are repealed:

42 Sections 4 through 6 of P.L.1969, c.257 (C.46:8B-4 through
43 C.46:8B-6);

44 Section 8 of P.L.1969, c.257 (C.46:8B-8);

45 Section 3 of P.L.1973, c.216 (C.46:8B-8.1);

46 Sections 9 through 11 of P.L.1969, c.257 (C.46:8B-9 through
47 C.46:8B-11);

48 Section 19 of P.L.1969, c.257 (C.46:8B-19);

1 Sections 25 through 29 of P.L.1969, c.257 (C.46:8B-25 through
2 C.46:8B-29);

3 P.L.1987, c.381 (C.46:8D-1 through C.46:8D-13 and C.46:8D-14
4 through C.46:8D-18).²

5
6 ²3. Notwithstanding the repeal of various sections of law
7 pursuant to section 2 of P.L. , c. (C.) (pending before the
8 Legislature as this bill):

9 a. P.L. , c. (C.) (pending before the Legislature as this
10 bill) shall not affect the validity of any common interest community
11 created prior to the effective date of P.L. , c. (C.) (pending
12 before the Legislature as this bill);

13 b. P.L. , c. (C.) (pending before the Legislature as this
14 bill) shall not affect any complaint or other pleading filed in a court
15 of competent jurisdiction or appeal of real estate taxes filed prior to
16 the effective date of P.L. , c. (C.) (pending before the
17 Legislature as this bill), which shall continue to be controlled by
18 those acts in effect prior to the effective date of P.L. ,
19 c. (C.) (pending before the Legislature as this bill);

20 c. Any reference to an act that is repealed by P.L. ,
21 c. (C.) (pending before the Legislature as this bill) in a
22 declaration or bylaws recorded prior to the effective date of P.L. ,
23 c. (C.) (pending before the Legislature as this bill) shall
24 continue to refer to the text of the act that is repealed,
25 notwithstanding P.L. , c. (C.) (pending before the
26 Legislature as this bill); and

27 d. No cooperative created prior to the effective date of the "The
28 Cooperative Recording Act of New Jersey," P.L.1987, c.381
29 (C.46:8D-1 et al.) shall be required by P.L. , c. (C.)
30 (pending before the Legislature as this bill) to record a transfer of a
31 cooperative unit.²

32

33 ²[2.] ^{4.}² This act shall take effect immediately.