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STATE OF NEW JERSEY

218th LEGISLATURE



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SYNOPSIS

Clarifies assessment payment and election participation requirements in planned real estate developments.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Community Development Committee on June 17, 2019, with amendments.



**An Act** concerning assessment payment and election participation in planned real estate developments, **1**supplementing P.L.1977, c.419 (C.45:22A-21 et seq.),**1** and amending various parts of the statutory law.

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

**1**1. (New section) The Legislature finds and declares that:

a. The associations of certain planned real estate developments in the State have recently interpreted that certain property owners are responsible for the payment of assessments and other charges to their associations even when the owners were not aware of the potential charges when deciding to purchase their homes;

b. Certain associations have further interpreted that the provisions of P.L.2017, c.106 (C.45:22A-45.1 et al.), enacted on July 13, 2017, may impose new responsibilities on certain property owners to pay assessments and other charges to their associations; and

c. It is necessary and in the public interest for the Legislature to:

(1) clarify that P.L.2017, c.106 (C.45:22A-45.1 et al.) did not impose new responsibilities on property owners to pay compulsory charges; and

(2) protect property owners from the issuance of sudden, unanticipated compulsory charges in planned real estate developments where assessments have historically been voluntary.**1**

**1[**1.**]** 2.**1** Section 3 of P.L.1977, c.419 (C.45:22A-23) is amended to read as follows:

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

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

b. "Developer" or "subdivider" means any person who disposes or offers to dispose of any lot, parcel, unit, or interest in a planned real estate development.

c. "Offer" means any inducement, solicitation, advertisement, or attempt to encourage a person to acquire a unit, parcel, lot, or interest in a planned real estate development.

d. "Purchaser" or "owner" means any person or persons who acquires a legal or equitable interest in a unit, lot, or parcel in a planned real estate development, and shall be deemed to include a prospective purchaser or owner. However, as used in P.L.1993, c.30 (C.45:22A-43 et seq.), "owner" means any person owning a unit, or an "owner" or holder of a "proprietary lease," as those terms are defined under subsections i. and k. of section 3 of "The Cooperative Recording Act of New Jersey," P.L.1987, c.381 (C.46:8D-3), if the development is a cooperative. **1[**This definition shall not require an association to offer election participation or voting rights for a person with non-payer status, or allow an association to impose responsibilities on a person with non-payer status to pay assessments or other charges compulsory charges.**]1**

e. "State" means the State of New Jersey.

f. "Commissioner" means the Commissioner of Community Affairs.

g. "Person" shall be defined as in R.S.1:1-2.

h. "Planned real estate development" or "development" means any real property situated within the State, whether contiguous or not, which consists of or will consist of, separately owned areas, irrespective of form, be it lots, parcels, units, or interest, and which are offered or disposed of pursuant to a common promotional plan, and providing for common or shared elements or interests in real property. This definition shall not apply to any form of timesharing.

This definition shall specifically include, but shall not be limited to, property subject to the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), any form of homeowners' association, any housing cooperative or to any community trust or other trust device.

This definition shall be construed liberally to effectuate the purposes of this act.

i. "Common promotional plan" means any offer for the disposition of lots, parcels, units or interests of real property by a single person or group of persons acting in concert, where such lots, parcels, units or interests are contiguous, or are known, designated or advertised as a common entity or by a common name.

j. "Advertising" means and includes the publication or causing to be published of any information offering for disposition or for the purpose of causing or inducing any other person to purchase an interest in a planned real estate development, including the land sales contract to be used and any photographs or drawings or artist's representations of physical conditions or facilities on the property existing or to exist by means of any:

(1) Newspaper or periodical;

(2) Radio or television broadcast;

(3) Written or printed or photographic matter;

(4) Billboards or signs;

(5) Display of model houses or units;

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

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

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

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

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

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

n. "Association" means an association for the management of common elements and facilities, organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43).

o. "Executive board" means the executive board of an association, as provided for in section 3 of P.L.1993, c.30 (C.45:22A- 45).

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

q. "Association member" means the owner of a unit within a planned real estate development, or a unit's tenant to the extent that the governing documents of the planned real estate development permit tenant membership in the association, and the developer to the extent that the development contains unsold lots, parcels, units, or interests pursuant to subsection c. of section 1 of P.L.1993, c.30 (C.45:22A-43). This definition shall not be construed to provide the developer a different transition obligation than that required pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), or to require that the developer is allowed to vote in executive board elections. **1[**This**]** Pursuant to subsection e. of section 2 of P.L.1993, c.30 (C.45:22-44), this**1** definition shall not require an owner with non-payer status to be an association member.

r. "Good standing" means the status - solely with respect to eligibility to (1) vote in executive board elections, (2) vote to amend the bylaws, and (3) nominate or run for any membership position on the executive board - applicable to an association member who is current on the payment of common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed, and which association member has not failed to satisfy a judgment for common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed. An association member is in good standing if he is in full compliance with a settlement agreement with respect to the payments of assessments, legal fees or other charges lawfully assessed, or the association member has a pending, unresolved dispute concerning charges assessed which dispute has been initiated: through a valid alternative to litigation pursuant to subsection c. of section 2 of P.L.1993, c.30 (C.45:22A-44); through subsection (k) of section 14 of the "Condominium Act," P.L.1969, c.257 (C.46:8B-14); or through a pertinent court action.

s. "Voting-eligible tenant" means a tenant of a unit within a planned real estate development in which:

(1) the governing documents of the development permit the tenant's participation in executive board elections, and

(2) either (a) the development has allowed tenant participation in executive board elections as a standard practice prior to the effective date of P.L.2017, c.106 (C.45:22A-45.1 et al.), or (b) the owner has affirmatively acknowledged the right of the tenant to vote through a provision of a written lease agreement or separate document.

This definition shall not be construed to affect voting as an agent of the owner through a proxy or power of attorney. Pursuant to subsection d. of this section, if the development is a cooperative corporation, then, an "owner" or holder of a "proprietary lease," as those terms are defined under subsections i. and k. of section 3 of "The Cooperative Recording Act of New Jersey," P.L.1987, c.381 (C.46:8D-3), is also an "owner," not a tenant, for the purposes of P.L.1993, c.30 (C.45:22A-43 et seq.).

t. **1**“Compulsory charge” means an assessment, fee, or other charge that the recorded declaration, master deed, bylaws or other recorded governing document of a planned real estate development requires the owner of a lot, parcel, unit, or interest in real property to pay on a consistent, repeated basis as a condition of ownership.

u.**1** “Non-payer status” means the status of an owner of real property within a planned real estate development, provided that with respect to the **1**owner’s lot, parcel, unit, or interest in**1** real property **1[**:

(1) the transition from developer control occurred prior to July 13, 2017, the effective date of P.L.2017, c.106 (C.45:22A-45.1 et al.); and

(2)**]** ,**1** the association **1[**did not have authority to compel payment of assessments or other charges**]** was a voluntary association**1** immediately prior to **1**July 13, 2017,**1** the effective date of P.L.2017, c.106 (C.45:22A-45.1 et al.).

**1**v. “Voluntary association” means an association of a planned real estate development that:

(1) functions pursuant to governing documents, however denominated, that do not expressly mandate the owner to be an association member or expressly authorize the association to require the owner to pay a compulsory charge; and

(2) initially formed prior to the effective date of P.L.1977, c.419 (C.45:22A-21 et seq.).**1**

(cf: P.L.2017, c.106, s.2)

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

1. a. A developer subject to the registration requirements of section 6 of P.L.1977, c.419 (C.45:22A-26) shall organize or cause to be organized an association whose obligation it shall be to manage the common elements and facilities. The association shall be formed on or before the filing of the master deed or declaration of covenants and restrictions, and may be formed as a for-profit or nonprofit corporation, unincorporated association, or any other form permitted by law. The application of P.L.1993, c.30 (C.45:22A-43 et seq.) to the association of an existing planned real estate development shall not be limited by:

(1) whether the developer has been subject to, or exempted from, the registration requirements of section 6 of P.L.1977, c.419 (C.45:22A-26); or

(2) the development's date of establishment.

b. Nothing in subsection a. of this section shall be construed to require the registration of a planned real estate development that is not otherwise required to register pursuant to section 6 of P.L.1977, c.419 (C.45:22A-26).

c. Membership in the association of a planned real estate development shall be comprised of each owner within the planned real estate development, provided that in a voluntary association membership shall include only those owners with non-payer status who have, in writing, opted into membership in the association, and may include the developer if the development contains unsold lots, parcels, units, or interests. An association may permit tenant participation in executive board elections, tenant membership in the association, or both. A voting-eligible tenant shall have only the same voting rights as the owner of the unit that the tenant leases, and such voting rights shall be in place of and not in addition to the rights of the owner of the leased unit, except as permitted under paragraph (9) of subsection c. of section 6 of P.L.2017, c.106 (C.45:22A-45.2). Pursuant to paragraph (9) of subsection c. of section 6 of P.L.2017, c.106 (C.45:22A-45.2), the votes associated with a unit shall not be altered by the participation of voting-eligible tenants.**1**

(cf: P.L.2017, c.106, s.4)

**1[**2.**]** 4.**1** Section 2 of P.L.1993, c.30 **1[**45:22A-44)**]** (C.45:22A-45)**1** is amended to read as follows:

2. a. Subject to the master deed, declaration of covenants and restrictions or other instruments of creation, the association may do all that it is legally entitled to do under the laws applicable to its form of organization.

b. The association shall exercise its powers and discharge its functions in a manner that protects and furthers the health, safety and general welfare of the residents of the community.

c. The association shall provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation.

d. The association may assert tort claims concerning the common elements and facilities of the development as if the claims were asserted directly by the unit owners individually.

e. **1**(1)**1** The association **1[**may**]** shall**1** not compel an owner with non-payer status to pay **1[**assessments or other charges**]** a compulsory charge**1** or be a member of the association.

**1**(2) So long as the governing documents of the development do not expressly state otherwise, a voluntary association shall permit an owner with non-payer status who has voluntarily become a member, or any successor in title, to voluntarily rescind their membership by written notice to the association.

f. The association is not required to offer election participation or voting rights for a person with non-payer status.**1**

(cf: P.L.1993, c.30, s.2)

**1[**3.**]** 5.**1** Section 1 of P.L.2017, c.106 (C.45:22A-45.1) is amended to read as follows:

1. The Legislature finds and declares that:

a. In addition to living under State, county, and municipal government, recent estimates conclude that over one million New Jersey residents currently live under the governance of a common interest community association, such as a condominium, cooperative, or homeowners' association;

b. The owners and residents of these communities often benefit from minimized maintenance responsibilities and greater assurances that neighboring properties will follow a predictable development scheme;

c. Along with these benefits, living under a community association also creates the necessity of paying assessments and fees in addition to the State and local taxes that other State residents pay, and requires compliance with property regulations that may be more stringent than those required by municipal government alone;

d. Because of the significant influence community associations have over the lives of their residents and because community associations are creatures of State law, it is unfair and runs contrary to American democratic values for these communities to be governed by trustees who are not elected in a fair and open manner;

e. The supplement to "The Planned Real Estate Development Full Disclosure Act" ("PREDFDA"), P.L.1977, c.419 (C.45:22A-21 et seq.), specifically, P.L.1993, c.30 (C.45:22A-43 et seq.), provided all owners and residents in common interest residential communities with specific rights and protections. These rights and protections exist regardless of whether a developer established the community prior to the effective date of PREDFDA. The supplement was not specific in declaring that all unit owners were members of the association or in recognizing that, along with certain specific tenant residents, all unit owners were entitled to participate fully in elections of members of the executive board;

f. Unit owners living in community associations should have the right to nominate candidates, run for, freely elect, and be elected to the executive boards that govern the communities; and

g. It is necessary and in the public interest for the Legislature to enact legislation to amend PREDFDA in order to:

(1) Establish that all unit owners, **1[**with limited exception**]** defined pursuant to subsection q. of section 3 of P.L.1977, c.419 (C.45:22A-23) as association members**1** , are members of the association and provide basic election participation rights for certain residents of common interest communities, including the right of resident owners in good standing to nominate any unit owner in good standing as a candidate for any position on the executive board, run, appear on the ballot, and be elected to any executive board position, in every executive board election, and for those rights to apply regardless of the date of a community's establishment; and

(2) Establish that, except under the very limited exceptions provided, a person may not serve on an executive board unless elected through a process consistent with the provisions of PREDFDA.

(cf: P.L.2017, c.106, s.1)

**1**6. (New section) If an association has recorded a lien for non-payment of a compulsory charge on or after July 13, 2017 that is not authorized, pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), due to the non-payer status of the unit owner, the lien shall be null and void.**1**

**1**7. The Commissioner of Community Affairs, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt the rules and regulations necessary for the implementation of P.L. , c. (C. ) (pending before the Legislature as this bill). The commissioner is authorized to notify county recording offices of liens that are null and void pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).**1**

**1[**4.**]** 8.**1** This act shall take effect immediately **1**and shall be retroactive to July 13, 2017**1**.