

SENATE, No. 2074

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MARCH 5, 2018

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

The “Owners’ Rights and Obligations in Shared Ownership Communities Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning rights and obligations of homeowners living in
2 shared ownership communities, amending various parts of the
3 statutory law, and supplementing Title 46 of the Revised
4 Statutes.

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

8
9 1. (New section) This act shall be known and may be cited as
10 the “Owners’ Rights and Obligations in Shared Ownership
11 Communities Act.”

12
13 2. (New section) The Legislature finds and declares that:

14 a. Homeowners’ associations formed to manage property
15 shared by all homeowners, whether that property be in
16 condominiums, planned communities, or cooperatives, function as
17 quasi-governments, often providing services in lieu of governmental
18 services, levying assessments and imposing fines, and, through their
19 control of maintenance and assessment levels, rulemaking powers,
20 and enforcement efforts, have substantial power to affect both the
21 quality of life and financial health of the individual homeowners
22 comprising their membership.

23 b. Current statutes are ineffective to compel homeowners’
24 associations to treat fairly the owners of homes in planned
25 communities or the holders of proprietary leases in cooperatives, in
26 the manner of fair treatment required for condominium owners.
27 The “Condominium Act,” P.L.1969, c.257 (C.46:8B-1 et seq.)
28 requires developers and associations to clearly recognize the
29 coexisting interests of each individual homeowner in the
30 commonly-owned facilities of a condominium, by requiring the
31 consent of a majority of the owners prior to making changes in the
32 governing documents. That act also provides “quasi-governmental”
33 powers to condominium boards to impose fines on members, and to
34 place liens on their individual homes. Similar protections and
35 powers have not been enunciated in the statutes for owners of
36 homes or holders of proprietary leases in planned communities and
37 cooperatives, respectively. The Legislature attempted to expand the
38 law to apply to all types of homeowners’ association through the
39 enactment of P.L.1993, c.30, but that act has proven ineffective in
40 making sure that owners in all types of these communities are
41 treated fairly and democratically by their governing boards.

42 c. The unilateral manner in which a developer is permitted
43 under the law to make all decisions for an association until a certain
44 level of sales of homes have been reached may serve to protect the
45 developer’s investment in the community while he is selling, but

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 does not serve an association well when it is required to act as a
2 governing board and operate in a democratic and fair manner, and
3 in the best interests of all of the owners as required by statute.
4 While protecting the interests of both, there is a need to clearly
5 separate in the law (1) the interests and role of a developer of a
6 shared ownership community from (2) the interests and role of the
7 association formed to represent the collective shared property
8 interests of owners of individual properties within such
9 communities, and (3) a need to provide standards to association
10 governing boards to foster transparent governance.

11 d. There is a further need to update New Jersey's laws to
12 provide improved, relevant disclosure to a prospective purchaser as
13 to the exact nature of what is being purchased, and a clear statement
14 of their rights and responsibilities as a member of a homeowners'
15 association. There is a need to standardize certain information, and
16 to allow developers to submit it in an electronic format for an
17 expedited review by the State.

18 e. There is a need to eliminate exemptions from required
19 disclosures by developers to purchasers in smaller shared ownership
20 communities.

21 f. In order to minimize State involvement in the affairs of
22 homeowners' associations, and in order to reduce the need for
23 litigation by members of associations, there is a need to create a
24 truly objective, reliable, and low cost system of dispute resolution
25 for shared ownership communities which will be overseen and
26 provided by experienced neutral parties, with adequate due process
27 protections.

28 g. There is a need to foster democratic governance in
29 community associations in the following areas, including, but not
30 limited to, the regulation of elections, budget adoption, access to
31 association records, open meetings, education of owners and
32 governing board members, and to raise awareness of the rights and
33 obligations of owners and those owners serving their communities
34 as governing board members. The Legislature declares that it is
35 necessary and in the public interest to establish an independent
36 Commission on Shared Ownership Communities, comprised of
37 individuals living in and providing services to such communities, to
38 function as a State liaison for such communities. The commission
39 will promote an equitable balance between the interests of
40 association governing boards, developers, owners, and residents in
41 these communities, through the provision of information and the
42 establishment of governance standards for such associations, and
43 will serve as a coordinating entity for the provision of alternative
44 dispute resolution services and enforcement of statutory rights.

45

46 3. (New section) As used in this act:

47 "Association," "community association" or "homeowners'
48 association" means any legal entity, incorporated or unincorporated,

1 that is responsible for the governance over common property of a
2 shared ownership community, regardless of whether the association
3 was required to be formed pursuant to any law or ordinance.

4 “Association documents” means governing documents.

5 “Commission” means the Commission on Shared Ownership
6 Communities established pursuant to section 5 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill).

8 “Common ownership community” means a shared ownership
9 community.

10 “Cooperative housing project” means any system of land
11 ownership and possession in which the fee title to the land and
12 structure is owned by a corporation in which the shareholders of
13 that corporation each also have a long term proprietary lease or
14 other long term arrangement of exclusive possession for a specific
15 unit of occupancy space located within the same structure.

16 "Declaration" means the recorded document or documents
17 containing the servitudes that create and govern the common
18 ownership community.

19 “Director” means the Director of the Division of Consumer
20 Affairs in the Department of Law and Public Safety.

21 “Dispute” means any disagreement between two or more parties
22 that conforms to the requirements of section 6 of P.L. ,
23 c. (C.) (pending before the Legislature as this bill).

24 “Executive director” means the executive director of the
25 Commission on Shared Ownership Communities.

26 “Governing body” or “governing board” means the council of
27 unit owners, board of directors, trustees, or any other body
28 authorized by a governing document to adopt binding rules or
29 regulations.

30 "Governing documents" means the declaration and other
31 documents, such as a deed, the articles of incorporation or articles
32 of association, bylaws, and rules and regulations that govern the
33 operation of an association, or determine the rights and obligations
34 of the members of the shared ownership community.

35 "Member" means the owner of an individually-owned property
36 bound by a servitude described in an association document to
37 contribute to maintenance of common property or to pay mandatory
38 dues to the association. In the case of a shared ownership
39 community in which membership in the association and the
40 obligation to pay assessments are independent, the term member
41 shall mean an owner who is bound by a servitude described in an
42 association document to contribute to maintenance of common
43 property or to pay mandatory dues to the association.

44 “Owner” means the individual owner of a residence in a shared
45 ownership community, and includes a unit owner in a
46 condominium, a lot owner in a homeowners' association, and a
47 holder of a proprietary lease in a cooperative housing project.

1 “Owners’ coordinating council” means the group to which
2 owners may be elected to serve, other than the governing board.

3 “Party” means a developer, an owner, a governing body, or an
4 occupant of a dwelling unit in a shared ownership community.

5 “Period of developer control” means the period of time during
6 which a developer has a controlling voting interest in the decisions
7 of the governing board of an association pursuant to section 5 of
8 P.L.1993, c.30 (C.45:22A-47), prior to the developer’s interests
9 terminating.

10 “Public Advocate” means the commissioner of the Department of
11 the Public Advocate.

12 “Shared ownership community” means a community in which
13 individual property owners are bound by a servitude in documents
14 required to be recorded for real property, which servitude requires
15 support of the shared or commonly-owned property, and the benefit
16 and use of the shared property is appurtenant to the individually-
17 owned property. A shared ownership community may consist of a
18 fee-simple estate, a leasehold, or an easement, unless the
19 responsibility for maintenance of such easement is determined by
20 the extent of actual use, and it may be any kind of property held or
21 enjoyed in common by owners of the individually owned property.
22 The term shall include, but not be limited to:

23 a development subject to a declaration, master deed or other
24 document enforced by an association;

25 a residential condominium, as that term is defined in section 3 of
26 P.L.1969, c.257 (C.46:8B-3 et seq.); and

27 a cooperative housing project.
28

29 4. (New section) This act is intended to supplement the law on
30 community associations, including, but not limited to, the
31 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), the
32 “Horizontal Property Act,” P.L.1963, c.168 (C.46:8A-1 et seq.),
33 “The Planned Real Estate Development Full Disclosure Act,”
34 P.L.1977, c.419 (C.45:22A-21 et seq.), P.L.1993, c.30 (C.45:22A-
35 43 et seq.), and any other law hereinafter enacted regulating shared
36 ownership communities and associations. To the extent that any
37 other law conflicts with the provisions of P.L. , c. (C.)
38 (pending before the Legislature as this bill), the laws shall be
39 harmonized to the extent possible; however, in the event of any
40 unreconciled conflicts, the provisions of P.L. , c. (C.)
41 (pending before the Legislature as this bill) shall control.
42

43 5. (New section) a. The Legislature finds it is necessary and
44 in the public interest to form a special State entity to:

45 (1) foster proper operation of homeowners' associations,
46 condominium associations, and cooperative housing corporations;

1 (2) promote education, public awareness and association
2 membership understanding of the rights and obligations of living in
3 a shared ownership community;

4 (3) reduce the number and divisiveness of disputes, and
5 encourage informal resolution of disputes;

6 (4) maintain property values and quality of life in these
7 communities;

8 (5) assist and oversee in the development of coordinated
9 community and government policies, programs, and services which
10 support these communities; and

11 (6) prevent potential public financial liability for repair or
12 replacement of shared ownership community facilities.

13 b. There is established in, but not of, the Department of Law
14 and Public Safety, the Commission on Shared Ownership
15 Communities. The commission shall serve as the State liaison for
16 citizens residing in shared ownership communities, and shall
17 provide educational and reference materials as requested by an
18 association or its members. The commission, in conjunction with
19 the director, shall adopt governance standards for shared ownership
20 communities and their governing boards and managers, in
21 accordance with P.L. , c. (C.) (pending before the Legislature
22 as this bill), to promote fair and democratic governance and good
23 business practices within such communities, in accordance with the
24 “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et
25 seq.). The commission shall monitor requests for alternative dispute
26 resolution services, and, working in conjunction with the Office of
27 Consumer Protection within the Division of Consumer Affairs in
28 the Department of Law and Public Safety, shall coordinate and
29 facilitate the resolution of disputes and enforce statutory rights in
30 such communities.

31 c. The commission shall appoint an executive director of the
32 commission and such other personnel as may be deemed necessary.
33 The executive director and professional staff shall serve at the
34 pleasure of the commission and shall receive such compensation as
35 provided by law. The executive director and professional staff, and
36 all expenses of the commission, shall be paid from the portion of
37 the registration fees required to be collected and allocated pursuant
38 to section 7 of P.L.1977, c.419 (C.45:22A-27), and directed to be
39 used for the purposes of the commission pursuant to
40 P.L. , c. (C.) (pending before the Legislature as this bill).
41 Members of the commission shall not be paid compensation, but
42 shall be entitled to be reimbursed for reasonable travel and meal
43 expenses, not to exceed \$100 per occurrence.

44 d. The Attorney General shall provide legal representation to
45 the commission.

46 e. The commission shall be comprised of 12 voting members.
47 Eleven public members shall be recommended for appointment by
48 the Attorney General and appointed by the Governor, as follows:

- 1 (1) One member shall be a resident of a shared ownership
2 community containing fewer than 26 units;
- 3 (2) One member shall be a resident of a shared ownership
4 community located in the northern region of the State;
- 5 (3) One member shall be a resident of a shared ownership
6 community located in the central region of the State;
- 7 (4) One member shall be a resident of a shared ownership
8 community located in the southern region of the State;
- 9 (5) One member shall be a resident of a cooperative housing
10 corporation;
- 11 (6) One member shall be a resident of an age-restricted shared
12 ownership community; and
- 13 (7) One member shall be a resident of a shared ownership
14 community containing more than 499 units.
- 15 Of the members selected under subparagraphs (1) through (7), no
16 more than three may include current members or former members
17 of association governing boards;
- 18 (8) One member shall be selected from developers of shared
19 ownership communities.
- 20 (9) Two members shall be selected from persons who are
21 members of professions associated with shared ownership
22 communities; one shall be an attorney, and one shall be a
23 professional community association manager; and
- 24 (10) One member who shall be a certified public accountant.
- 25 (11) The Public Advocate, or the Public Advocate's designee,
26 shall serve as an ex-officio voting member of the commission, and
27 shall represent the rights and interests of low and moderate income
28 households residing in dwelling units reserved by deed restriction
29 for occupancy by such households within shared ownership
30 communities.
- 31 f. Each public member shall serve a three-year term. Of the
32 members first appointed, one-third shall be appointed for one-year
33 terms, one-third shall be appointed for two-year terms, and one-
34 third shall be appointed for three-year terms. A member shall not
35 serve more than two consecutive full terms. A member appointed
36 to fill a vacancy shall serve the rest of the unexpired term.
37 Members shall continue in office until their successors are
38 appointed and qualified.
- 39 g. All public members shall serve at the pleasure of the
40 Governor.
- 41 h. The members of the commission shall elect annually a
42 chairman of the commission. The commission shall meet at the call
43 of the chair as often as required to perform its duties, but shall meet
44 at least quarterly. A majority of the voting members shall be a
45 quorum for the transaction of business, and a majority of the voting
46 members present at any meeting may take any official action.
- 47 i. The Director of the Division of Consumer Affairs shall
48 arrange for offices and supplies for staff of the commission as

1 appropriate, and shall be entitled to reimbursement for all costs
2 incurred in complying with the provisions of P.L. , c. (C.)
3 (pending before the Legislature as this bill) from the funds available
4 from the fees collected from developers of planned real estate
5 developments pursuant to subsection e. of section 7 of
6 P.L.1977, c.419 (C.45:22A-27).

7 j. The commission shall submit annually by March 1 of each
8 year, a report to the Legislature and the Governor covering its
9 activities of the previous calendar year, summarizing its activities,
10 needs, and recommendations, and the extent to which the goals of
11 P.L. , c. (C.) (pending before the Legislature as this bill)
12 are being met, in the manner provided under section 2 of
13 P.L.1992, c.164 (C.52:14-19.1).

14
15 6. (New section) Any party in a shared ownership community
16 may request alternative dispute resolution services from the
17 Commission on Shared Ownership Communities established
18 pursuant to section 5 of P.L. , c. (C.) (pending before the
19 Legislature as this bill), in accordance with the provisions of section
20 7 of P.L. , c. (C.) (pending before the Legislature as this
21 bill).

22 For the purposes of this section, “dispute” shall be interpreted
23 broadly to mean any matter for which a resolution is sought which
24 is connected in some relevant manner to a shared ownership
25 community or its association.

26 a. Prior to the filing of a request for dispute resolution with the
27 Commission on Shared Ownership Communities, a party shall make
28 a good faith effort to utilize the dispute resolution procedures
29 required to be adopted by their respective community association
30 pursuant to section 2 of P.L.1993, c.30 (C.45:22A-44), or any
31 reallocation thereof, and section 14 of P.L.1969, c.257 (C.46:8B-
32 14). If the dispute resolution services provided or arranged by the
33 association do not resolve the dispute in the view of any of the
34 parties, then any of those parties may file a request with the
35 Commission on Shared Ownership Communities. The commission
36 shall process all requests for dispute resolution in accordance with
37 rules to be promulgated by the commission and the Attorney
38 General, in accordance with the provisions of P.L. ,
39 c. (C.) (pending before the Legislature as this bill).

40 b. In the event a party alleges that a violation of statutory law,
41 or any regulations promulgated thereto, or that a violation of
42 association governing documents, has occurred by a governing
43 board or a governing board member of an association, then that
44 party may submit a request for review and enforcement
45 consideration pursuant to section 8 of P.L. , c. (C.)
46 (pending before the Legislature as this bill).

47 c. Prior to filing a lien for unpaid fines assessed upon an
48 owner, an association shall be required to submit the matter for

1 review through arbitration arranged by the commission through the
2 Division of Consumer Affairs in the Department of Law and Public
3 Safety, in accordance with section 9 the provisions of
4 P.L. , c. (C.) (pending before the Legislature as this
5 bill.). Only those liens based on fines imposed which are submitted
6 in accordance with this section and section 9 shall be eligible for
7 recording with the county recording office.

8
9 7. (New section) The Executive Director of the Commission
10 on Shared Ownership Communities shall review all requests for
11 dispute resolution services which are received by the commission,
12 and shall:

13 a. issue a letter opinion advising the requester of available
14 options or solutions, or the applicability of the provisions of
15 P.L. , c. (C.) (pending before the Legislature as this bill)
16 to a particular set of facts, in lieu of the provision of alternative
17 dispute resolution services (ADR);

18 b. arrange for ADR services to be provided within a reasonable
19 period of time through the dispute resolution programs of the
20 Division of Consumer Affairs in the Department of Law and Public
21 Safety, in accordance with regulations to be promulgated by that
22 department;

23 c. arrange for a hearing to proceed in accordance with section 8
24 of P.L. , c. (C.) (pending before the Legislature as this
25 bill) for an alleged violation of regulatory or statutory law;
26 provided, however, that the executive director may arrange for
27 ADR services in lieu of a hearing for allegations of violations of
28 governing documents, at his discretion;

29 d. arrange for a special hearing panel for claims concerning
30 construction deficiencies; or

31 e. request the commission's preliminary review of any request
32 which the executive director deems frivolous, unreasonable, or
33 lacking any basis in fact, prior to arranging for ADR services, or
34 submitting a matter for review for enforcement action. If the
35 commission deems the request frivolous, unreasonable, or lacking
36 any basis in fact, it shall reject the request.

37 The executive director of the commission shall be authorized to
38 act on behalf of the commission to process initial claims and make
39 arrangements for the provision of dispute resolution services or
40 hearings. The executive director of the commission shall also be
41 authorized to act on behalf of the commission to impose a stay on
42 the actions of any governing board pending the processing and
43 resolution of a request.

44
45 8. (New section) a. The executive director shall arrange for a
46 hearing for allegations of a violation of statutory or regulatory law,
47 or may arrange for a hearing for allegations of violations by
48 members of the governing board of the governing documents of an

1 association, within 10 business days for claims of election fraud,
2 and 90 calendar days of the receipt of all other types of requests, as
3 follows:

4 The executive director of the commission shall arrange for the
5 services of an arbitrator through the local consumer affairs offices
6 of the Division of Consumer Affairs, through any other dispute
7 resolution programs of the division, or alternatively, by
8 interdepartmental agreement, may arrange for the services of the
9 Department of the Public Advocate, to conduct the hearing which
10 shall be a binding arbitration, or, if a majority of its members
11 approves, the commission may convene a hearing panel, and may
12 make determinations with at least five of its members participating.

13 b. At the hearing authorized to be conducted pursuant to this
14 section, the panel or arbitrator, as the case may be, shall give full
15 hearing to both the complaint of the resident or residents and to any
16 evidence in contradiction or mitigation that the association, if
17 present or represented and offering such evidence, may present. At
18 the conclusion of the hearing, the arbitrator or panel shall
19 determine, if required, from the circumstances of the case:

20 (1) whether the governing documents are deficient under the
21 law, or violate any provision of P.L. , c. (C.) (pending
22 before the Legislature as this bill) or any other statute or regulation
23 relevant to homeowners' associations;

24 (2) whether the actions of any members of the governing board
25 or its employees or agents violate statutory law;

26 (3) whether the governing documents were violated by any
27 party; or

28 (4) under a claim of election fraud, whether the election
29 proceedings comported with the standards promulgated by the
30 commission, and if they did not, should the election be voided, and
31 a new election ordered.

32 c. (1) On all matters the commission shall have the authority,
33 on the basis of the arbitrator's findings or the hearing panel's
34 determination, to install a temporary governing body in the event it
35 is determined that no properly-elected members are serving on the
36 governing body.

37 (2) The commission shall also have the powers necessary to
38 reform deficient governing documents that do not comply with the
39 provisions of P.L. , c. (C.) (pending before the
40 Legislature as this bill), or any other State or federal law to make
41 those documents comply.

42 (3) The commission shall have the power to impose fines on
43 governing board members, or a governing board's employees or
44 agents, equal to those powers granted by the Legislature to
45 governing boards permitting them to impose fines on members of
46 associations.

47 (4) The commission shall have the power to stay a lien filing for
48 an assessment, attorney's fees, or late fees if it is determined

1 through either an ADR or a hearing that the basis for the lien is not
2 warranted or on the basis that the association has not registered with
3 the commission; the commission shall also have the power to order
4 a release of lien to be prepared and filed by an association.

5 (5) The commission may:

6 (a) petition the court to appoint a receiver of a shared ownership
7 development in any case in which the developer has abandoned the
8 development;

9 (b) in the case of a shared ownership community which has
10 more than 50 percent of its units foreclosed upon, appoint a
11 governing board from the members of the association who are not
12 banks, mortgagees or other lending institutions which hold the units
13 through foreclosures, and appoint a property manager, which
14 appointment power shall terminate upon the owners, other than
15 foreclosing banks or mortgages, holding a 51 percent voting interest
16 in the association, electing their own governing board and
17 contracting on their own behalf for management services.

18 (c) appoint to the governing board of an association a temporary
19 member to replace the voting interests of the developer, in the event
20 the developer has filed for bankruptcy.

21 (d) appoint a temporary property manager for an association that
22 has a dispute under review, when that association has no properly
23 elected governing board members and no property manager, which
24 appointment shall be effective until valid elections are held or until
25 the community terminates in accordance with law.

26 d. The commission, in conjunction with the Director of the
27 Division of Consumer Affairs and the Director of the Division of
28 Codes and Standards in the Department of Community Affairs,
29 shall empanel a select advisory panel for claims concerning
30 construction defects in common elements. The panel should be
31 comprised, to the extent feasible, of individuals with significant
32 knowledge in the construction of residential housing and other
33 structures, and may include any of the following:

34 (1) members of a county construction board of appeals;

35 (2) members of the code advisory board in the Department of
36 Community Affairs; or

37 (3) local code enforcement officials;

38 but shall not include any officials or individuals who were or are
39 serving in a capacity which gave or gives them responsibility in any
40 manner for oversight of the specific construction which is the
41 subject of the dispute resolution.

42 Upon receiving a claim from an owners' coordinating council
43 concerning construction deficiencies or warranty issues pertaining
44 to common elements of a shared ownership community, the
45 executive director of the commission shall arrange for arbitration
46 for claims of construction defects in the common elements of a
47 shared ownership community, and, shall be authorized to utilize the

1 expertise of the select advisory panel to make a determination of
2 developer negligence or liability.

3 e. Hearings under P.L. , c. (C.) (pending before the
4 Legislature as this bill may be conducted:

5 (1) by the division at the local consumer affairs office servicing
6 the region in which the homeowners' association is located;

7 (2) by the commission with at least five of its members
8 participating, if no local panel is available to the division; or

9 (3) by an arbitrator selected by the director.

10 f. (1) If any person summoned to be examined pursuant to this
11 section shall refuse to be sworn, or to affirm, or to testify, or to
12 answer a proper question, or to produce the books, papers,
13 documents or tangible things demanded, or shall otherwise engage
14 in misconduct, the Superior Court may, on motion, and after
15 affording that person the opportunity to be heard, punish that person
16 in the same manner as like failure is punishable in a case pending in
17 the court.

18 (2) Orders of an arbitrator under this section, if binding
19 arbitration has been selected, shall be binding upon the parties. The
20 failure of any person to obey a binding order of the arbitrator issued
21 in accordance with this section shall be punishable as contempt of
22 court by the court in the same manner as like failure is punishable
23 in an action pending in the court when the matter is brought before
24 the court by motion filed by the Attorney General and supported by
25 affidavit stating the circumstances. In the case of a finding by the
26 commission that an officer or trustee of the governing body
27 knowingly or willfully failed to follow the governing documents,
28 such officer or trustee shall be deemed to have vacated their
29 position on the governing body, and a new election for his or her
30 position shall be held within 90 days of the finding.

31

32 9. (New section) a. The commission shall arrange for
33 arbitration on all proposed lien filings based on fines imposed
34 within 15 days of submission by an association. A determination to
35 approve or disapprove an association's request for lien filing on the
36 basis of fines imposed shall be made no later than 60 days from the
37 date of the claim submission. Extensions may be granted to any
38 party to submit additional information; however, the commission
39 shall have the discretion to disapprove a lien filing upon the
40 repeated failure of an association to provide requested information
41 to either entity.

42 b. The director shall establish expedited procedures to approve
43 or disapprove lien filings for unpaid fines, and shall establish the
44 forms required to be filed with the county clerk to authorize such
45 lien filing when approved pursuant to this section.

46 c. Unless otherwise specified in P.L. , c. (C.)
47 (pending before the Legislature as this bill), all hearings and
48 alternative dispute resolution procedures shall be conducted in

1 accordance with procedures adopted by the agency providing the
2 services, and relevant applicable law. Dispute resolution may be
3 handled as a binding arbitration at the discretion of the commission;
4 if so, an appeal may be made only to the extent allowed for appeals
5 made under binding arbitration. An arbitrator shall make a final
6 determination in any matter no later than 90 days from the last
7 hearing date, but may grant reasonable continuances of the hearing
8 in order to fully investigate the matter.

9
10 10. (New section) Upon the adoption of the regulations required
11 to be promulgated pursuant to section 14 of P.L. , c. (C.)
12 (pending before the Legislature as this bill), every association as
13 defined under section 3 of P.L. , c. (C.) (pending before
14 the Legislature as this bill) shall complete and submit an annual
15 informational disclosure to the Commission on Shared Ownership
16 Communities established pursuant to section 5 of
17 P.L. , c. (C.) (pending before the Legislature as this bill),
18 on such form and in such a manner as the commission shall require.
19 Thereafter, an association shall be required to disclose these items
20 annually to the commission, in accordance with its regulations.
21 There shall be no fees required of any association, or any member
22 of an association, for submitting such information.

23 At a minimum, the disclosure form shall require:

24 The name, location and address of the shared interest
25 community, and the number of dwelling units located therein;

26 A statement as to whether the association is incorporated, and the
27 location of the corporate agent;

28 The name of the most recently-elected officers or trustees of the
29 association, the length of their terms of office, and contact
30 information, including mailing addresses for each of them;

31 The name of the agent for service of process of the association;

32 The name of the developer of the community, if still actively
33 selling or renting in the community, and the developer's current
34 address, if known; and

35 Any additional information that the commission may deem
36 useful to carry out its purposes under P.L. , c. (C.)
37 (pending before the Legislature as this bill).

38
39 11. (New section) a. It shall be unlawful under P.L.1960, c.39
40 C.56:8-1 et seq.) for an association which has been formed to
41 manage a shared ownership community to violate the provisions of
42 P.L. , c. (C.) (pending before the Legislature as this bill.)

43 b. It shall be unlawful under P.L.1960, c.39 (C.56:8-1 et seq.)
44 for a developer of a shared ownership community to violate the
45 provisions of P.L. , c. (C.) (pending before the Legislature
46 as this bill).

47 c. The Alternative Dispute Resolution Program established by
48 the Division of Consumer Affairs in the Department of Law and

1 Public Safety shall be expanded to include dispute resolution
2 services to homeowners and residents of shared ownership
3 communities. The expanded program shall permit trained volunteers
4 who are also residents or professional employees of such
5 communities to participate in the provision of dispute resolution,
6 provided that for each dispute at least three volunteers shall be
7 utilized, and no more than one of them shall be an employee of, or
8 sit as a current member of, a homeowners' association governing
9 board, or has served as a member of a homeowners' association
10 governing board within the immediate preceding two years. A
11 property manager currently employed by an association shall not
12 participate as a dispute resolution volunteer for that association.

13 d. The director shall promulgate such rules and regulations as
14 necessary to effectuate this section pursuant to the "Administrative
15 Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
16

17 12. (New section) a. The activities of the Commission on
18 Shared Ownership Communities shall be funded from the fees
19 imposed upon developers upon the registration of planned
20 developments pursuant to section 7 of P.L.1977, c.419 (C.45:22A-
21 27), as amended by P.L. , c. (C.) (pending before the
22 Legislature as this bill).

23 b. In the event that these fees described in section a. of this
24 section are insufficient to defray the costs associated with the
25 provision of dispute resolution services under the provision of
26 P.L. , c. (C.) (pending before the Legislature as this bill),
27 the provider of dispute resolution services may charge an
28 association a reasonable fee to defray the costs of dispute resolution
29 services provided, or administrative costs incurred in connection
30 with, the provision of those services.

31 c. Dispute resolution services shall be deemed to be provided
32 upon the agreement of the commission to hear, or arrange for
33 mediation or arbitration. Those associations that have not provided
34 information as required pursuant to section 10 of P.L. ,
35 c. (C.) (pending before the Legislature as this bill) as of the
36 date dispute resolution services are deemed provided shall do so
37 immediately prior to the provision of services.
38

39 13. (New section) This section shall be known and may be cited
40 as the "Bill Of Rights And Responsibilities For Owners In Shared
41 Ownership Communities."

42 a. The commission shall publish the following and post on its
43 Internet site, the following information, as set off by quotation
44 marks:

45 "Bill Of Rights And Responsibilities For Owners In Shared
46 Ownership Communities.

47 As a member of a shared ownership community association:

- 1 (1) You have the right to be informed before buying a home in a
2 shared ownership community of the community's governing
3 documents, financial condition, assessments and fees, and its rules
4 and regulations. You have the duty to ask for this information from
5 the seller, to read and understand it, and to obey the rules if you buy
6 the home; You have the right to notify the Division of Consumer
7 Affairs in the Department of Law and Public Safety if a developer
8 has not furnished you with this information;
- 9 (2) You have the right to be treated with respect by your
10 neighbors and by the governing board members and managers of
11 your community. You have the duty to treat your neighbors,
12 directors, officers, and managers with respect.
- 13 (3) You have the right to privacy consistent with the law and the
14 reasonable rules of the community. You (and your tenants, if any)
15 have the duty to respect the rights of your neighbors to enjoy their
16 privacy.
- 17 (4) You have the right to prompt and effective service from your
18 association's governing board members or management. You have
19 the duty to pay your legitimately imposed assessments on time.
- 20 (5) You have the right to vote in elections and to vote on the
21 adoption of new rules, as permitted under State law; and to vote on
22 the assessments, when permitted by law or community rules. You
23 have the duty to inform yourself of the issues, and to vote on them.
- 24 (6) You have the right to vote to approve the sale of any of the
25 common elements or common property of the community as
26 provided under State law; and you have the right to vote to approve
27 the construction of any new common facilities or common elements
28 if those facilities were not listed on the master deed or declaration
29 as "to be built" when you purchased your individual property in the
30 community, as provided under State law. You have the duty to
31 participate in voting when required for association actions.
- 32 (7) You have the right to fair elections and to be nominated for
33 and to run for office. You have the duty to make sure that elections
34 are fair and that candidates for whom you vote are qualified.
- 35 (8) You have the right to honest and reasonable government
36 from your elected board and the managers it chooses. You have the
37 duty to participate in the affairs of the community by volunteering
38 your time and talents as needed and by informing yourself of the
39 board's activities.
- 40 (9) You have the right to be informed of your community's acts
41 and financial condition, including balances in reserve accounts, and
42 to inspect, and make copies of, its books and records. You have the
43 duty to know and understand its rules, and to provide to the
44 community any information required by the rules, unless prohibited
45 by law.
- 46 (10) You have the right to meet with your fellow owners to
47 discuss the community's and the board's conduct, free of charge.
48 You have the duty to obtain the information necessary to form a fair

1 and balanced opinion, and to promote positive solutions for the
2 good of the community.

3 (11) You have the right to fair treatment if you are charged with
4 a violation of the community rules. This includes the right to know
5 what rule is involved and to a fair hearing, and a right to appeal any
6 violation to the Commission on Shared Ownership Communities.
7 You have the duty to respond to any such claim promptly and
8 honestly, and to cooperate in good faith and in a civilized manner in
9 an effort to resolve the dispute.

10 (12) If you are unable to resolve disputes directly with your
11 community, you have the right to bring your dispute to the
12 Commission on Shared Ownership Communities, where it may be
13 resolved without the need for expensive litigation. You have the
14 duty first to bring your dispute to the attention of the community's
15 governing board and to allow the board a fair opportunity to
16 respond, and to use whatever dispute resolution procedures your
17 community requires, provided those procedures comport with State
18 law; if you bring your dispute to the commission you have the duty
19 to cooperate in the commission's complaint process and to treat
20 other parties with respect.

21 (13) You have the right to architectural and other rules (such as
22 parking or pets) that are properly adopted and published, that are
23 clear and reasonable, and that are fairly and consistently enforced.
24 You have the right to seek changes to any rules that you believe are
25 obsolete or inappropriate. You (and your tenants, if any) have the
26 duty to obey the rules, to follow the proper procedures to obtain any
27 required permission for modifications you wish to make, and to
28 keep the area around your home clean and free of trash, pests, and
29 other nuisances.”

30 b. Nothing in this section shall be construed as permitting the
31 rights enumerated in this section to be waived in any manner by any
32 association or owner.

33 c. Nothing in this section shall be construed as prohibiting the
34 waiver of any constitutional rights by an owner, provided that any
35 waiver so executed shall be in writing and shall contain
36 documentation that the owner has:

37 (1) a specific knowledge of the constitutional right being
38 waived; and

39 (2) made an intentional decision to abandon the protection of the
40 constitutional right.

41

42 14. (New section) a. Within 120 days of the effective date of
43 P.L. , c. (C.) (pending before the Legislature as this bill),
44 the commission shall adopt, and from time to time review for
45 amendment, minimum standards for conduct for shared ownership
46 community associations, which shall include, but not be limited to,
47 all the requirements for such associations as provided in
48 P.L. , c. (C.) (pending before the Legislature as this

1 bill) on such matters as elections, including recall elections, voting,
2 access to records, maintenance and retention of records, minutes,
3 association-provided dispute resolution services, bidding, audits,
4 and conflicts of interests. The commission may adopt more specific
5 requirements for each of these matters than those required pursuant
6 to P.L. , c. (C.) (pending before the Legislature as this
7 bill), provided that the standards adopted comport with the intent of
8 the Legislature to foster democracy and fairness in matters of
9 governance by an association, and protect the rights of owners to
10 vote on matters guaranteed under P.L. , c. (C.) (pending
11 before the Legislature as this bill).

12 b. The commission shall establish a program and materials for
13 the training of owners who are elected to serve on the governing
14 boards of shared ownership communities. At least two hours of
15 training shall be mandatory on the part of board members, which
16 shall be completed no later than 180 days prior to the expiration of
17 the member's term of office. The program shall provide guidance
18 on all of the information relevant to a board member effectively
19 serving at the helm of their community, and shall include good
20 business practices, model record keeping procedures, legal
21 requirements for boards, the making of a budget and maintaining
22 reserve accounts, information on various State entities available to
23 assist the board, and any other information the commission deems
24 relevant. The commission shall have the authority to remove a
25 board member who does not complete the training required pursuant
26 to this section.

27 c. The commission shall adopt forms and procedures for the
28 disclosure of information by associations as required pursuant to
29 section 10 of P.L. , c. (C.) (pending before the Legislature
30 as this bill).

31 d. The commission shall maintain an Internet site to effectuate
32 the purposes of P.L. , c. (C.) (pending before the
33 Legislature as this bill).

34 The commission shall adopt the regulations necessary to
35 effectuate this section pursuant to the "Administrative Procedure
36 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

37
38 15. (New section) Within 120 days of the effective date of
39 P.L. , c. (C.) (pending before the Legislature as this bill),
40 the director, in consultation with the Commission of Shared
41 Ownership Communities, established pursuant to section 5 of
42 P.L. ,c. (C.) (pending before the Legislature as this bill),
43 shall:

44 a. cause to be prepared and distributed in written form and on
45 available on the Internet, a booklet, which shall be made available
46 to the general public, to associations and to homeowners in shared
47 ownership communities, and which shall serve as a general guide to
48 community associations. The booklet shall be distributed free of

1 charge by the association to each homeowner and by each developer
2 to prospective purchasers prior to the signing of a sales contract; it
3 shall be the duty of each seller of a unit to provide a copy of the
4 booklet to a purchaser of the unit before the time of signing of the
5 sales contract. The booklet shall include at least the following:

6 (1) An explanation of the nature of home ownership in a shared
7 ownership community and a glossary of relevant terms, including,
8 but not limited to, "master declaration," "bylaws," "master deed,"
9 "covenants and restrictions," "common elements," "liens," "fines,"
10 "rules," "alternative dispute resolution," "fees," and "governing
11 board";

12 (2) A description of the rights and responsibilities of
13 homeowners, including those contained in section 12 of
14 P.L. , c. (C.) (pending before the Legislature as this
15 bill);

16 (3) A description of the duties and powers of, and restrictions
17 on, governing boards, including reference to any applicable statutes,
18 regulations, and relevant court decisions. The booklet shall include
19 information concerning conflict of interest requirements applicable
20 to governing board members, officers and to professionals hired by
21 associations and shall also include reference to any other sources of
22 information that may be recommended by the commission as being
23 of assistance to governing board members and officers in the
24 discharge of their duties;

25 (4) A description of the statutory and regulatory requirements
26 for association bylaws or rules and such other material as the
27 commission shall deem useful;

28 (5) A description of the special rules applicable to units which
29 are subject to affordability controls, including municipal ordinances
30 or other items which may affect the payment of common expenses,
31 and reference materials concerning resale controls which may apply
32 to such units;

33 (6) A description and reference to the federal law concerning the
34 housing for older persons exception from discrimination under the
35 federal Fair Housing Act Amendments of 1988, which applies to
36 age-restricted communities; and

37 (7) A listing of documents and other information that a potential
38 purchaser of a unit in a shared ownership community should obtain
39 before entering into a contract to purchase a unit, including, but not
40 limited to: copies of the association's governing documents; a copy
41 of the latest capital reserve study, if any, showing the condition, life
42 expectancy, and replacement costs of major mechanical systems and
43 other common elements; any litigation pending against the
44 association; any pending notices or orders issued by any
45 governmental entity; the association's procedures for alternate
46 dispute resolution and an explanation of statutory and regulatory
47 requirements, process of adopting rules, conducting elections,
48 providing access to records, approval of budgets, and review of

1 homeowners' applications to do work on their units; delinquency
2 and foreclosure rates; the association's insurance coverages; and
3 governmental and non-governmental remedies available in the event
4 of violation of the rights of unit owners. These documents and this
5 information shall be made available to prospective purchasers upon
6 written request and copies shall be provided, for a charge not
7 exceeding the reasonable cost of copying or printing, to any person
8 who has contracted to purchase a unit or home within the shared
9 ownership community; and

10 b. make publicly available by means of electronic Internet
11 technology all of the material required pursuant to this section.

12 The Director of the Division of Consumer Affairs shall
13 promulgate such regulations as are necessary to effectuate this
14 section pursuant to the "Administrative Procedure Act," P.L.1968,
15 c.410 (C.52:14B-1 et seq.).
16

17 16. (New section) a. In a shared ownership community, each
18 purchaser of a dwelling unit, or leasehold interest derived through
19 the purchase of shares, in the case of a cooperative housing
20 corporation, shall be deemed to have a proportional ownership
21 interest in the common elements of the shared ownership
22 community, which interests shall arise concomitantly with the
23 purchase of a unit, house, or leasehold unit in the shared ownership
24 community. The ownership interests in the shared property of a
25 shared ownership community for each purchaser of a dwelling unit,
26 house, or cooperative leasehold unit shall be expressed in the
27 association documents as follows:

28 (1) for a condominium, a proportional undivided interest
29 assigned to each unit, as required pursuant to P.L.1969, c.257
30 (C.46:8B-1 et seq.);

31 (2) for a cooperative, a proportional interest in the cooperative
32 corporation, expressed in shares; or

33 (3) for a planned development, a proportional interest assigned
34 in the same proportion as the common expense liability for each
35 member; however, title to the common property may be in the name
36 of the association collectively on behalf of all members, or it may
37 be reflected as an interest allocated to each individually-owned
38 property, in the manner as permitted for a condominium pursuant to
39 P.L.1969, c.257 (C.46:8B-1 et seq.).

40 b. A developer of a shared ownership community shall be
41 deemed to be the owner of any unsold units, and any common
42 elements interests assigned to such unsold units. During the period
43 of developer control of an association as defined pursuant to section
44 5 of P.L.1993, c.30 (C.45:22A-47), a developer shall be deemed the
45 owner of the interests in the common elements which have not
46 otherwise been assigned to individual owners.

1 c. The provisions of this section shall be deemed to control all
2 declarations, master deeds, and bylaws, regardless of the date of the
3 formation of the shared ownership community.

4
5 17. (New section) Ownership rights in the common property of
6 a shared ownership community shall be construed broadly to:

7 a. prohibit long-term developer control of an association
8 beyond the time period authorized under section 5 of P.L.1993, c.30
9 (C.45:22A-47);

10 b. prohibit the delegation of powers from a constituent
11 association to a master association in the community whenever the
12 delegation of powers affects property, or the responsibility for
13 property, which is not the common property of all members of the
14 master association or affects services not shared in common by all
15 members of the community; and

16 c. require a vote of approval by at least 67 percent of the
17 members of the association prior to the sale of any common
18 elements or to the construction of any new common elements which
19 were not listed in the association documents to be constructed by
20 the developer or the association, and which are not considered
21 repairs or enhancements to current common elements under the
22 criteria set forth in section 21 of P.L. , c. (C.) (pending
23 before the Legislature as this bill). No action shall lie or be brought
24 by an association to compel the members of the association to vote
25 to approve any of the items in this subsection.

26
27 18. (New section) The governing board and its agents, servants,
28 and employees, shall act in accordance with the properly recorded
29 bylaws of the association. For the purposes of this section, properly
30 recorded means recorded in the official government recording office
31 for such documents in the county in which the real property is
32 located.

33 a. In addition to the provisions of P.L.1969, c.257 (C.46:8B-1
34 et seq.) and P.L.1993, c.30 (C.45:22A-43 et seq.) which provide
35 requirements for bylaws, the bylaws of an association shall include,
36 and, if they do not, shall be deemed to include, the following
37 provisions:

38 (1) The form of administration of the association shall be
39 described, providing for a governing board, specifying the powers,
40 duties, manner of selection and removal, and compensation, if any,
41 of the officers, directors, or trustees of the governing board. Unless
42 otherwise provided in the bylaws, the governing board shall consist
43 of five members. The governing board shall elect from among its
44 members a president, vice president, secretary, and treasurer, who
45 shall perform the duties of those offices customarily performed by
46 officers of nonprofit corporations. On or after the effective date of
47 P.L. , c. (C.) (pending before the Legislature as this bill),
48 these officers shall serve without compensation, unless

1 compensation is authorized by a vote of 67 percent of all members
2 eligible to vote, which shall be effective for a period of no longer
3 than three years. The governing board may appoint and designate
4 other officers and assign them such duties as it deems appropriate.

5 (2) (a) The method for providing notice to members and the
6 holding of meetings of the association; provided that a meeting of
7 the members shall be held at least annually, and a requirement that
8 minutes be kept at every meeting;

9 (b) inclusion in at least one meeting notice annually a disclosure
10 of the fact that owners may file requests for dispute resolution with
11 the Commission on Shared Ownership Communities and a
12 statement made to that effect at that meeting; and

13 (c) a requirement that the minutes of all meetings of the
14 members and of all meetings of the governing board be kept and
15 made available to the members within a reasonable time after the
16 meeting. Minutes shall be kept in a businesslike manner, shall
17 reflect accurately what was discussed at the meeting, but need not
18 be verbatim, and shall be available for inspection by members, or
19 their authorized representatives, and board members at reasonable
20 times. The association shall retain these minutes for a period of not
21 less than seven years. Minutes of closed sessions shall be made
22 available in a redacted form if required pursuant to regulations of
23 the Commission on Shared Ownership Communities.

24 (3) The share or percentage of, and the manner of sharing,
25 common expenses for each member shall be stated. The manner of
26 sharing the common expenses for each member of a planned
27 development constructed on or after the effective date of
28 P.L. , c. (C.) (pending before the Legislature as this bill),
29 containing only single family homes on separate lots shall be on a
30 per unit basis. Members of associations of shared ownership
31 communities constructed prior to the effective date of
32 P.L. , c. (C.) (pending before the Legislature as this bill)
33 shall be permitted to petition their association governing board to
34 call for a meeting to vote to change the method of sharing the
35 common expenses, upon obtaining the signatures of at least five
36 percent of all of the members of the association. The share or
37 percentage of obligation for the common expenses shall not be
38 computed on a different basis than the allocation of interests in the
39 common property among the individual unit or home owners in any
40 community.

41 (4) The manner of collecting from the members their shares of
42 the expenses for the maintenance of the shared ownership
43 community property shall be stated. Assessments shall be made
44 against members not less frequently than quarterly, in amounts not
45 less than are required to provide funds in advance for payments of
46 all of the anticipated current operating expenses and for all of the
47 unpaid operating expenses previously incurred. The Commission

1 on Shared Ownership Communities may vary from the provisions
2 of this subparagraph by regulation.

3 (5) The method by which the bylaws may be amended
4 consistent with the provisions of P.L. , c. (C.) (pending
5 before the Legislature as this bill) shall be stated. If the bylaws fail
6 to provide a method of amendment, the bylaws may be amended if
7 the amendment is approved by no less than two-thirds of the
8 members. No bylaw shall be revised or amended by reference to its
9 title only.

10 (6) The officers and directors or trustees of the association shall
11 have a fiduciary relationship to the members.

12 (7) (a) Any member of the governing board may be recalled and
13 removed from office, with or without cause, by the vote of, or
14 agreement in writing by, a majority of all members of the
15 association, provided that any vote to recall shall be initiated only
16 upon a petition of at least five percent of all owners. A special
17 meeting of the association membership to vote for the recall of a
18 member or members of the governing board shall thereafter be held,
19 giving notice of the meeting as required for a meeting of members,
20 and the notice shall state the purpose of the meeting.

21 (b) Any member of an association shall be permitted to request a
22 hearing before the commission whenever a petition for a recall vote
23 has been presented to a governing board in accordance with this
24 subparagraph, and the board has failed to call for a special meeting
25 of the association within 20 days of the receipt of the petition.
26 Under such circumstances, the governing board shall be barred from
27 expending resources to delay the holding of a special meeting, but
28 shall be permitted to expend such funds as are necessary to confirm
29 the validity of the petition. The commission may consider whether
30 it is necessary to escrow funds of any association pending such a
31 special meeting. Notwithstanding this subparagraph, if there are
32 less than 45 calendar days until the next scheduled election, the
33 holding of a special meeting shall not be required.

34 (8) A procedure for notifying the governing board if a member
35 intends to make an audio or video recording of a meeting; provided
36 that permission to make an audio recording for a member's own use
37 shall not be denied to a member, regardless of whether the
38 governing board arranges to record the same meeting. The board
39 shall announce prior to the start of a meeting whether an audio or
40 video recording is being made.

41 (9) A requirement for maintaining adequate insurance to protect
42 the association and the property comprising the common elements
43 of the shared ownership community. Insurance shall cover
44 replacement costs, and deficits in insurance coverage on common
45 elements shall not be chargeable to any individual unit owner. A
46 copy of each policy of insurance in effect shall be made available
47 for inspection by members at reasonable times.

1 (10) A method of adopting and of amending administrative rules
2 and regulations governing the details of the operation and use of the
3 shared ownership community property; and

4 (11) Restrictions on, and requirements respecting the time, place,
5 and manner of the use of the common community property, so long
6 as such restrictions and requirements are not inconsistent with the
7 association documents, P.L. , c. (C.) (pending before the
8 Legislature as this bill), the regulations of the Commission on
9 Shared Ownership Communities, and any other local, federal, or
10 State law.

11 b. Whether or not incorporated, the association shall be an
12 entity which shall act through its officers and may enter into
13 contracts, bring suit, and be sued. If the association is not
14 incorporated, it may be deemed to be an entity existing pursuant to
15 P.L. , c. (C.) (pending before the Legislature as this bill)
16 and a majority of the members of the governing board or of the
17 association, as the case may be, shall constitute a quorum for the
18 transaction of business. Process may be served upon the association
19 by serving any officer of the association or by serving the agent
20 designated for service of process. Service of process upon the
21 association shall not constitute service of process upon any
22 individual unit owner.

23 c. The Commission on Shared Ownership Communities may
24 promulgate more specific guidelines for bylaw provisions, in
25 accordance with the provisions and purposes of P.L. ,
26 c. (C.) (pending before the Legislature as this bill), in order
27 to foster transparent and democratic governance in shared
28 ownership communities. Such guidelines may include bidding
29 procedures, restrictions on conflicts of interests, meeting and
30 minutes requirements, or any matters which the commission deems
31 necessary to minimize disputes and promote transparent and
32 democratic governance within shared ownership communities.

33

34 19. (New section) a. Any management, employment, service or
35 maintenance contract, or contract for the supply of equipment or
36 material which is directly or indirectly made by or on behalf of an
37 association, during the period of developer control pursuant to
38 section 5 of P.L.1993, c.30 (C.45:22A-47), shall not be entered into
39 for a period in excess of two years. Any such contract or lease may
40 not be renewed or extended for periods in excess of two years and
41 at the end of any two-year period, an association may terminate any
42 further renewals or extensions thereof.

43 b. Notwithstanding the above, any management contract or
44 agreement entered into after the effective date of P.L. ,

45 c. (C.) (pending before the Legislature as this bill) shall
46 terminate 90 days after the first meeting of a governing board
47 whose decisions are not subject to the voting control of the
48 developer pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47),

1 unless the owner-controlled governing board ratifies the contract or
2 agreement.

3

4 20. (New section) a. An association shall maintain all records
5 concerning the business and governance matters of the association,
6 in accordance with generally accepted accounting standards and
7 principles.

8 The records required to be maintained shall include, but not be
9 limited to:

10 (1) records of receipts and expenditures, cancelled checks,
11 general ledgers, and copies of contracts or any other legal
12 documents, including, but not limited to, opinions of the association
13 attorney construing the governing documents, correspondence with
14 any federal, State, or local governmental entity; and

15 (2) An account for each member, designating the name and
16 current mailing address of the member, the amount of each
17 assessment, the dates on which and amounts in which the
18 assessments come due, the amount paid on the account, and the
19 balance due.

20 b. Records shall be open to inspection by association members
21 or their authorized representatives at reasonable times, and written
22 summaries of such records shall be supplied at least annually to the
23 members or their authorized representatives. All records required
24 to be available for inspection by association members shall be
25 maintained by an association for a period of not less than seven
26 years. The records may be permitted to be maintained in a
27 graphically-based form on an easily accessible electronic media,
28 from which copies may be reproduced.

29 (1) An association shall not charge a fee to an owner for
30 viewing or copying association records which exceeds the cost
31 permitted to be charged to a requester under section 6 of
32 P.L.2001, c.404 (C.47:1A-5).

33 (2) A requesting owner who is denied access to an association
34 record by the custodian of the record, at the option of the owner,
35 may:

36 (a) institute a proceeding to challenge the custodian's decision
37 by filing an action in Superior Court which shall be heard in the
38 vicinage where it is filed by a Superior Court Judge who has been
39 designated to hear such cases because of that judge's knowledge and
40 expertise in matters relating to access to records; or

41 (b) in lieu of filing an action in Superior Court, file a request for
42 assistance in obtaining records with the Commission on Shared
43 Ownership Communities established pursuant to section 5 of
44 P.L. , c. (C.) (pending before the Legislature as this
45 bill).

46 In the event a proceeding is instituted under subparagraph (a) of
47 this paragraph, the failure of the association to permit inspection of
48 its accounting records by members or their authorized

1 representatives shall entitle any persons prevailing in an
2 enforcement action to recover reasonable attorney's fees from the
3 person in control of the books and records, if that person, who
4 directly or indirectly, knowingly denied access to the books and
5 records for inspection.

6
7 21. (New section) Notwithstanding any association document, or
8 any law to the contrary, on or after the effective date of
9 P.L. , c. (C.) (pending before the Legislature as this bill):

10 a. Construction of any new common element not listed or
11 contemplated on the master deed or declaration shall require an
12 amendment to the declaration. For the purposes of this subsection
13 “construction” shall include construction, reconstruction, or
14 substantial alteration of a common element whenever the
15 construction, reconstruction, or alteration does not involve repair or
16 replacement using substantially the same materials as the original
17 construction to that existing common or limited common element,
18 but shall not mean any construction undertaken pursuant to a
19 governmental or court order. This subsection shall not apply to
20 construction, or financing in conjunction with that construction,
21 undertaken by a developer in accordance with the association
22 documents.

23 b. Except as expressly permitted in this section, an association
24 shall not collect from its members as part of the customary
25 association assessment, or pay from association funds, dues or
26 contributions to any private trade or industry organization
27 concerning community associations, or make contributions for
28 charitable or political purposes. An association may collect dues, or
29 charitable or political contributions if authorized under the bylaws,
30 but such collections shall be stated separately from the billing for
31 customary monthly maintenance charges, shall be clearly
32 designated as voluntary, and if unpaid, may in no case be assessable
33 or collectible as an unpaid common expense against an owner. A
34 contribution to any private trade or industry organization through a
35 property management company or property manager on behalf of an
36 association is prohibited. An association violating this subsection
37 shall be subject to sanctions by the Commission on Shared
38 Ownership Communities, as set forth in P.L. , c. (C.)
39 (pending before the Legislature as this bill). Any member of a
40 governing board who knowingly violates this subsection shall be
41 removed from the governing board by the Commission on Shared
42 Ownership Communities, and a new election ordered for that
43 position.

44 c. Regardless of any governing documents to the contrary, an
45 owner of more than one unit shall not have attributed to him or her
46 more than 50 percent of all of the votes in the association. This
47 subsection shall not apply to shared ownership communities
48 containing less than four dwelling units; provided that this number

1 may be modified by the Commission on Shared Ownership
2 Communities pursuant to regulations.

3
4 22. (New section) a. Unless the members of an association have
5 determined, by a majority vote at a duly called meeting of the
6 members, to provide no reserves or fewer reserves than required by
7 this subsection, in addition to annual operating expenses, the budget
8 of an association shall include individual reserve accounts for
9 capital expenditures and deferred maintenance. These accounts
10 shall include, but are not limited to, roof replacement, building
11 painting, and pavement resurfacing, regardless of the amount of
12 deferred maintenance expense or replacement cost, and for any
13 other item for which the deferred maintenance expense or
14 replacement cost exceeds \$10,000. The amount to be reserved shall
15 be computed by means of a formula which is based upon estimated
16 remaining useful life and estimated replacement cost or deferred
17 maintenance expense of each reserve item. The association may
18 adjust replacement reserve assessments annually to take into
19 account any changes in estimates or extension of the useful life of a
20 reserve item caused by deferred maintenance.

21 b. Reserve funds and any interest accruing thereon shall remain
22 in the individual reserve account or accounts, and shall be used only
23 for authorized individual reserve expenditures unless their use for
24 other purposes is approved in advance by a majority vote of all of
25 the members.

26 c. In a multi-association community, only the voting interests
27 of the units subject to assessment to fund the reserves in question
28 shall be eligible to vote on questions that involve waiving or
29 reducing the funding of reserves, or using existing reserve funds for
30 purposes other than purposes for which the reserves were intended.

31 d. The budget, account balances, and reserve accounts shall be
32 disclosed to owners in an annual financial statement, and to
33 prospective purchasers upon the signing of a contract for sale.
34 Associations shall have audits performed by a certified public
35 accountant at least once every three years. The audit reports shall
36 be filed with the Commission on Shared Ownership Communities,
37 established pursuant to section 5 of P.L. , c. (C.) (pending
38 before the Legislature as this bill). The commission may waive the
39 requirement for an audit for associations with diminutive annual
40 expenditures, and in addition may adopt regulations concerning the
41 frequency and type of audits required.

42
43 23. (New section) a. Unit owners may be subject to reasonable
44 fines or other sanctions, other than liens therefor, imposed by the
45 governing board for failure to comply with the bylaws or rules
46 adopted by the association, which fines or sanctions may be
47 imposed only subsequent to alternative dispute resolution
48 proceedings provided in accordance with the association's properly

1 adopted dispute resolution procedures and compliance with the
2 informational disclosure requirements of P.L. , c. (C.)
3 (pending before the Legislature as this bill).

4 b. An owner individually, a group of owners, or the association
5 may maintain an action for the recovery of damages, or for
6 injunctive relief, or a combination thereof, for the failure to comply
7 with the rules or bylaws, or the failure to uphold the rules or
8 bylaws in the case of an association, provided a request has
9 not been filed with the Commission on Shared Ownership
10 Communities for alternative dispute resolution services pursuant to
11 P.L. , c. (C.) (pending before the Legislature as this bill)
12 by any party named in the action, and the resolution of that request
13 is still pending. The prevailing party on the majority of issues
14 litigated in an action for recovery of damages or injunctive relief,
15 whether a unit owner or owners, or the association, shall be entitled
16 to reasonable expenses, including attorneys fees, that may be
17 incurred by it in connection with such action.

18
19 24. (New section) No lien shall be recorded by an association
20 for a fine imposed after the effective date of P.L. , c. (C.)
21 (pending before the Legislature as this bill) without judicial or
22 administrative review as provided under P.L. , c. (C.)
23 (pending before the Legislature as this bill). No association shall
24 impose a fine after the effective date of P.L. , c. (C.)
25 (pending before the Legislature as this bill), unless such association
26 shall have offered alternative dispute resolution to the member in
27 accordance with P.L. , c. (C.) (pending before the
28 Legislature as this bill) and shall have provided the information to
29 the Commission on Shared Ownership Communities as required by
30 P.L. , c. (C.) (pending before the Legislature as this bill).

31
32 25. (New section) a. There is created in the Division of
33 Consumer Affairs of the Department of Law and Public Safety, a
34 Bureau of Homebuyers Protection. On and after the effective date
35 of P.L. , c. (C.) (pending before the Legislature as this
36 bill), this bureau shall be the State entity responsible for enforcing
37 the consumer protections afforded purchasers in shared ownership
38 communities pursuant to "The Planned Real Estate Development
39 Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.).

40 b. The bureau shall promulgate such rules and regulations as
41 may be necessary to effectuate "The Planned Real Estate
42 Development Full Disclosure Act, P.L.1977, c.419 (C.45:22A-21 et
43 seq.) and any additional regulations which may be necessary to
44 effectuate the provisions of P.L. , c. (C.) (pending before
45 the Legislature as this bill), in accordance with the "Administrative
46 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The bureau
47 may adopt in its entirety or incorporate by reference selected
48 regulations previously promulgated to effectuate "The Planned Real

1 Estate Development Full Disclosure Act, P.L.1977,
2 c.419 (C.45:22A-21 et seq.). The bureau shall develop the forms
3 and procedures for the streamlined submission and expedited
4 review process required under P.L. , c. (C.) (pending
5 before the Legislature as this bill), and adopt regulations therefor,
6 within 120 days of the enactment of P.L. , c. (C.)
7 (pending before the Legislature as this bill).

8 c. (1) The bureau shall be headed by an attorney-at-law of the
9 State of New Jersey.

10 (2) The bureau shall administer the law in a manner that at all
11 times provides protection to prospective purchasers through clear
12 and understandable disclosures, of the rights of purchasers and
13 owners of homes within shared ownership communities in all
14 phases of the home-buying process.

15

16 26. (New section) a. Notwithstanding any municipal ordinance
17 to the contrary, a municipality shall not require a developer of a
18 planned real estate development as that term is defined in section 3
19 of P.L.1977, c.419 (C.45:22A-23), by ordinance or otherwise, to
20 form a homeowners' association, if the common elements in the
21 community will consist solely of unimproved, unencumbered open
22 space, unless such an association is required to be formed pursuant
23 to section 1 of P.L.1993, c.30 (C.45:22A-43).

24 b. A municipality shall not require a developer of a planned
25 real estate development to construct certain of the common
26 elements prior to the construction of other elements of the
27 community, common or otherwise; provided, however, that a
28 municipality may prioritize the construction of roads or require
29 such other contributions as allowed pursuant to the "Municipal
30 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

31

32 27. Section 3 of P.L.1989, c.9 (C.2A:62A-14) is amended to
33 read as follows:

34 3. a. No bylaws shall be amended in accordance with section 2
35 of **【this act】** P.L.1989, c.9 unless the amendment is approved by the
36 owners of at least two-thirds of the units held by unit owners other
37 than the developer in the qualified common interest community.

38 b. **【Bylaws】** Certain bylaw provisions which limit the liability
39 of an association in any civil action brought by or on behalf of a
40 unit owner to respond in damages as a result of bodily injury to the
41 unit owner occurring on the premises of the qualified common
42 interest community which were adopted in accordance with section
43 2 of **【this act】** P.L.1989, c.9 shall apply to actions for injuries
44 sustained on or after the operative date of the bylaws and shall
45 expire on the 91st day next following enactment of P.L. ,
46 c. (C.) (pending before the Legislature as this bill);
47 provided, however, that such bylaws may readopted and approved
48 by two-thirds of the current members of the association other than

1 the developer. Any such bylaws readopted shall expire annually
2 unless readopted and approved annually by at least two-thirds of
3 members of the association eligible to vote.

4 (cf: P.L.1989, c.9, s.3)

5
6 28. Section 1 of P.L.1989, c.299 (C.40:67-23.2) is amended to
7 read as follows:

8 1. For the purposes of this act:

9 a. "Condominium" means the form of real property ownership
10 provided for under the "Condominium Act," P.L.1969, c.257
11 (C.46:8B-1 et seq.);

12 b. "Cooperative" means a housing corporation or association
13 wherein the holder of a share or membership interest in the
14 corporation or association is entitled to possess and occupy, for
15 dwelling purposes, a house, apartment, or other unit of housing
16 owned by the corporation or association, or to purchase a unit of
17 housing constructed or erected by the corporation or association;

18 c. "Fee simple community" means a private community which
19 consists of individually owned lots or units and provides for
20 common or shared elements or interests in real property;

21 d. "Horizontal property regime" means the form of real
22 property ownership provided for under the "Horizontal Property
23 Act," P.L.1963, c.168 (C.46:8A-1 et seq.);

24 e. "Qualified private community" means a residential
25 condominium, cooperative, fee simple community, **[or]** horizontal
26 property regime, or a shared ownership community, provided that
27 no community shall be deemed a qualified private community if its
28 association has not registered with the Commission on Shared
29 Ownership Communities as required pursuant to
30 P.L. , c. (C.) (pending before the Legislature as this bill),
31 the residents of which do not receive any tax abatement or tax
32 exemption related to its construction, comprised of a community
33 trust or other trust device, condominium association, homeowners'
34 association, or council of co owners, wherein the cost of
35 maintaining roads and streets and providing essential services is
36 paid for by a not-for-profit entity consisting exclusively of unit
37 owners within the community. No apartment building or garden
38 apartment complex owned by an individual or entity that receives
39 monthly rental payments from tenants who occupy the premises
40 shall be considered a qualified private community. No "proprietary
41 campground facility," as defined in section 1 of P.L.1993, c.258
42 (C.45:22A-49), shall be considered to be a qualified private
43 community.

44 (cf: P.L.1993, c.258, s.10)

45
46 29. Section 3 of P.L.1977, c.419 (C.45:22A-23) is amended to
47 read as follows:

- 1 3. As used in this act unless the context clearly indicates
- 2 otherwise:
- 3 a. "Disposition" means any sales, contract, lease, assignment,
- 4 or other transaction concerning a planned real estate development.
- 5 b. "Developer" or "subdivider" means any person who disposes
- 6 or offers to dispose of any lot, parcel, unit, or interest in a planned
- 7 real estate development.
- 8 c. "Offer" means any inducement, solicitation, advertisement,
- 9 or attempt to encourage a person to acquire a unit, parcel, lot, or
- 10 interest in a planned real estate development.
- 11 d. "Purchaser" or "owner" means any person or persons who
- 12 acquires a legal or equitable interest in a unit, lot, or parcel in a
- 13 planned real estate development, and shall be deemed to include a
- 14 prospective purchaser or owner. However, as used in P.L.1993,
- 15 c.30 (C.45:22A-43 et seq.), "owner" means any person owning a
- 16 unit, or an "owner" or holder of a "proprietary lease," as those terms
- 17 are defined under subsections i. and k. of section 3 of "The
- 18 Cooperative Recording Act of New Jersey," P.L.1987, c.381
- 19 (C.46:8D-3), if the development is a cooperative.
- 20 e. "State" means the State of New Jersey.
- 21 f. "Commissioner" means the Commissioner of Community
- 22 Affairs, except that after the effective date of P.L. , c. (C.)
- 23 all references to the commissioner shall mean the Chief of the
- 24 Bureau of Homebuyers Protection established pursuant to that act.
- 25 g. "Person" shall be defined as in R.S.1:1-2.
- 26 g. "Person" shall be defined as in R.S.1:1-2.
- 27 h. "Planned real estate development" or "development" means
- 28 any real property situated within the State, whether contiguous or
- 29 not, which consists of or will consist of, separately owned areas,
- 30 irrespective of form, be it lots, parcels, units, or interest, and which
- 31 are offered or disposed of pursuant to a common promotional plan,
- 32 and providing for common or shared elements or interests in real
- 33 property. This definition shall not apply to any form of
- 34 timesharing.
- 35 This definition shall specifically include, but shall not be limited
- 36 to, property subject to the "Condominium Act," P.L.1969, c.257
- 37 (C.46:8B-1 et seq.), any form of homeowners' association, any
- 38 housing cooperative or to any community trust or other trust device.
- 39 This definition shall be construed liberally to effectuate the
- 40 purposes of this act.
- 41 i. "Common promotional plan" means any offer for the
- 42 disposition of lots, parcels, units or interests of real property by a
- 43 single person or group of persons acting in concert, where such lots,
- 44 parcels, units or interests are contiguous, or are known, designated
- 45 or advertised as a common entity or by a common name.
- 46 j. "Advertising" means and includes the publication or causing
- 47 to be published of any information offering for disposition or for
- 48 the purpose of causing or inducing any other person to purchase an

1 interest in a planned real estate development, including the land
2 sales contract to be used and any photographs or drawings or artist's
3 representations of physical conditions or facilities on the property
4 existing or to exist by means of any:

- 5 (1) Newspaper or periodical;
- 6 (2) Radio or television broadcast;
- 7 (3) Written or printed or photographic matter;
- 8 (4) Billboards or signs;
- 9 (5) Display of model houses or units;
- 10 (6) Material used in connection with the disposition or offer of
11 the development by radio, television, telephone or any other
12 electronic means; or
- 13 (7) Material used by developers or their agents to induce
14 prospective purchasers to visit the development, particularly
15 vacation certificates which require the holders of such certificates to
16 attend or submit to a sales presentation by a developer or his agents.

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

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

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

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

40 n. "Association" means an association for the management of
41 common elements and facilities **【**, organized pursuant to section 1
42 of P.L.1993, c.30 (C.45:22A-43)**】** in a community containing such
43 common elements and facilities.

44 o. "Executive board" or governing board means the
45 **【**executive**】** board elected by the members of an association, **【**as
46 provided for**】** in accordance with **【**section**】** sections 3 and 5 of
47 P.L.1993, c.30 (C.45:22A- 45) and (C.45:22A-47) and P.L. _____,
48 c. (C. _____) (pending before the Legislature as this bill).

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

4 q. "Association member" means the owner of a unit within a
5 planned real estate development, or a unit's tenant to the extent that
6 the governing documents of the planned real estate development
7 permit tenant membership in the association, and the developer to
8 the extent that the development contains unsold lots, parcels, units,
9 or interests pursuant to subsection c. of section 1 of P.L.1993, c.30
10 (C.45:22A-43). This definition shall not be construed to provide
11 the developer a different transition obligation than that required
12 pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), or to require
13 that the developer is allowed to vote in executive board elections.

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

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

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

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

42 This definition shall not be construed to affect voting as an agent
43 of the owner through a proxy or power of attorney. Pursuant to
44 subsection d. of this section, if the development is a cooperative
45 corporation, then, an "owner" or holder of a "proprietary lease," as
46 those terms are defined under subsections i. and k. of section 3 of
47 "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. "Chief" means the Chief of the Bureau of Homebuyers Protection in the Department of Law and Public Safety, established pursuant to section 25 of P.L. , c. (C.) (pending before the Legislature as this bill).
(cf: P.L.2017, c.106, s.2)

30. Section 4 of P.L.1977, c.419 (C.45:22A-24) is amended to read as follows:

4. **【This act】** On and after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), P.L.1977, c.419 shall be administered by the 【Division of Housing and Development in the State Department of Community Affairs】 Bureau of Homebuyers Protection in the Division of Consumer Affairs in the Department of Law and Public Safety, established pursuant to section 25 of P.L. , c. (C.) (pending before the Legislature as this bill), hereinafter referred to as the "agency."
(cf: P.L.1993, c.258, s.9)

31. Section 5 of P.L.1977, c.419 (C.45:22A-25) is amended to read as follows:

5. a. Unless the method of disposition is adopted for purposes of evasion, the provision of this act shall not apply to offers or dispositions:

(1) By an owner for his own account in a single or isolated transaction;

(2) Wholly for industrial, commercial, or other nonresidential purposes;

(3) Pursuant to court order;

(4) By the United States, by this State or any of its agencies or political subdivisions;

(5) Of real property located without the State;

(6) Of cemetery lots or interests;

(7) **【Of less than 100 lots, parcels, units or interests; provided, however, that with respect to condominiums and cooperatives, this exemption shall not apply, irrespective of the number of lots, parcels, units, or interests offered or disposed of】** (Deleted by amendment, P.L. , c. (C.) (pending before the Legislature as this bill);

(8) **【Of developments where the common elements or interests, which would otherwise subject the offering to this act, are limited to the provision of unimproved, unencumbered open space】** (Deleted by amendment, P.L. , c. (C.) (pending before the Legislature as this bill);

(9) In a development composed wholly of rental units, where the relationship created is one of landlord and tenant ;

1 (10) Of any form of timesharing.

2 b. The agency may from time to time, pursuant to its rules and
3 regulations, exempt from ~~any of the provisions~~ the registration
4 fees, in part, or from certain detailed disclosure requirements of
5 ~~this act~~ P.L.1977, c.419, any development, or any lots, units,
6 parcels, or interests in a development, if it finds that the
7 enforcement of ~~this act~~ P.L.1977, c.419 with respect to such ~~is~~, is
8 not necessary in the public interest or required for the protection of
9 purchasers by reason of the small amount of the purchase price
10 involved, will not be impacted by such reduced fees or streamlined
11 reporting requirements. No registration fees shall be charged in
12 connection with units reserved for occupancy by low or moderate
13 income households. Reduced registration fees may be permitted
14 when the limited character of the offering, or the limited nature of
15 the common or shared elements weighs in favor of such fee
16 reduction.

17 (cf: P.L.2006, c.63, s.40)

18

19 32. Section 6 of P.L.1977, c.419 (C.45:22A-26) is amended to
20 read as follows:

21 6. a. Unless otherwise exempted:

22 (1) No developer may offer or dispose of any interest in a
23 planned real estate development, prior to the registration of such
24 development with the agency.

25 (2) No developer may dispose of any lot, parcel, unit, or interest
26 in a planned real estate development, unless he: delivers to the
27 purchaser a current public offering statement, on or before the date
28 the contract ~~date of such disposition~~ is signed.

29 b. Any contract or agreement for the purchase of any parcel,
30 lot, unit, or interest in a planned real estate development may be
31 canceled without cause by the purchaser by sending or delivering
32 written notice of cancellation by midnight of the seventh calendar
33 day following the day on which the purchaser has executed such
34 contract or agreement. Every such contract or agreement shall
35 contain, in writing, the following notice in 10-point bold type or
36 larger, directly above the space provided for the signature of the
37 purchaser:

38 "NOTICE TO THE PURCHASER: you have the right to cancel
39 this contract by sending or delivering written notice of cancellation
40 to the developer by midnight of the seventh calendar day following
41 the day on which it was executed. Such cancellation is without
42 penalty, and any deposit made by you shall be promptly refunded in
43 its entirety."

44 c. Notice as required in subsection b. shall, in addition to all
45 other requirements, be conspicuously located and simply stated in
46 the public offering statement.

1 d. The developer shall make copies of the public offering
2 statement freely available to prospective purchasers prior to the
3 contract date of disposition.

4 (cf: P.L.1977, c.419, s.6)

5
6 33. Section 7 of P.L.1977, c.419 (C.45:22A-27) is amended to
7 read as follows:

8 7. a. The application for registration of the development shall
9 be filed as prescribed by the agency's rules and shall contain the
10 following documents and information:

11 (1) An irrevocable appointment of the agency to receive service
12 of any lawful process in any noncriminal proceeding arising under
13 this act against the developer or his agents;

14 (2) The states or other jurisdictions, including the federal
15 government, in which an application for registration or similar
16 documents have been filed, and any adverse order, judgment or
17 decree entered in connection with the development by the
18 regulatory authorities in each jurisdiction or by any court;

19 (3) The name, address, and principal occupation for the past five
20 years of every officer of the applicant or person occupying a similar
21 status, or performing similar management functions; the extent and
22 nature of his interest in the applicant or the development as of a
23 specified date within 30 days of the filing of the application;

24 (4) Copies of its articles of incorporation, with all amendments
25 thereto, if the developer is a corporation; copies of all instruments
26 by which the trust is created or declared, if the developer is a trust;
27 copies of its articles of partnership or association and all other
28 papers pertaining to its organization, if the developer is a
29 partnership, unincorporated association, joint stock company, or
30 any other form of organization; and if the purported holder of legal
31 title is a person other than the developer, copies of the above
32 documents from such person;

33 (5) A legal description of the lands offered for registration,
34 together with a map showing the subdivision proposed or made, and
35 the dimensions of the lots, parcels, units, or interests, as available,
36 and the relation of such lands to existing streets, roads, and other
37 improvements;

38 (6) Copies of the deed or other instrument establishing title to
39 the subdivision in the developer, and a statement in a form
40 acceptable to the agency of the condition of the title to the land
41 comprising the development, including encumbrances as of a
42 specified date within 30 days of the date of application by a title
43 opinion of a licensed attorney, or by other evidence of title
44 acceptable to the agency;

45 (7) Copies of the instrument which will be delivered to a
46 purchaser to evidence his interest in the development, and of the
47 contracts and other agreements which a purchaser will be required
48 to agree to or sign;

- 1 (8) Copies of any management agreements, service contracts, or
2 other contracts or agreements affecting the use, maintenance or
3 access of all or a part of the development;
- 4 (9) A statement of the zoning and other government regulations
5 affecting the use of the development including the site plans and
6 building permits and their status, and also of any existing tax and
7 existing or proposed special taxes or assessments which affect the
8 development; and a statement of the existing use of adjoining lands;
- 9 (10) A statement that the lots, parcels, units or interests in the
10 development will be offered to the public, and that responses to
11 applications will be made without regard to marital status, sex, race,
12 creed, or national origin;
- 13 (11) A statement of the present condition of access to the
14 development, the existence of any unusual conditions relating to
15 noise or safety, which affect the development and are known to the
16 developer, the availability of sewage disposal facilities and other
17 public utilities including water, electricity, gas, and telephone
18 facilities in the development to nearby municipalities, and the
19 nature of any improvements to be installed by the developer and his
20 estimated schedule for completion;
- 21 (12) In the case of any conversion an engineering survey shall be
22 required, which shall include mechanical, structural, electrical and
23 engineering reports to disclose the condition of the building;
- 24 (13) In the case of any development or portion thereof against
25 which there exists a blanket encumbrance, a statement of the
26 consequences for an individual purchaser of a failure, by the person
27 or persons bound, to fulfill obligations under the instrument or
28 instruments creating such encumbrances and the steps, if any, taken
29 to protect the purchaser in such eventuality;
- 30 (14) A narrative description of the promotional plan for the
31 disposition of the lots, parcels, units or interests in the development,
32 together with copies of all advertising material which has been
33 prepared for public distribution, and an indication of their means of
34 communication;
- 35 (15) The proposed public offering statement;
- 36 (16) A current financial statement, which shall include such
37 information concerning the developer as the agency deems to be
38 pertinent, including but not limited to, a profit and loss statement
39 certified by an independent public accountant and information
40 concerning any adjudication of bankruptcy during the last five years
41 against the developer, or any principal owning more than 10% of
42 the interest in the development at the time of filing, provided,
43 however, that this shall not extend to limited partners, or others
44 whose interests are solely those of investors;
- 45 (17) Copies of instruments creating easements or other
46 restrictions;
- 47 (18) A statement of the status of compliance with the
48 requirements of all laws, ordinances, regulations, and other

1 requirements of governmental agencies having jurisdiction over the
2 premises;

3 (19) Such other information, documentation, or certification as
4 the agency deems necessary in furtherance of the protective
5 purposes of this act.

6 b. The information contained in any application for registration
7 and copies thereof, shall be made available to interested parties at a
8 reasonable charge and under such regulations as the agency may
9 prescribe.

10 c. A developer may register additional property pursuant to the
11 same common promotional plan as those previously registered by
12 submitting another application, providing such additional
13 information as may be necessary to register the additional lots,
14 parcels, units or interests, which shall be known as a consolidated
15 filing.

16 d. The developer shall immediately report any material changes
17 in the information contained in an application for registration. The
18 term "material changes" shall be further defined by the agency in its
19 regulations.

20 e. The application shall be accompanied by a fee in an amount
21 equal to ~~【\$500.00 plus \$35.00 per lot, parcel, unit, or interest~~
22 ~~contained in the application, which fees may be used by the agency~~
23 ~~to partially defray the cost of rendering services under the act. If~~
24 ~~the fees are insufficient to defray the cost of rendering services~~
25 ~~under P.L.1977, c.419 (C.45:22A-21 et seq.), the agency shall, by~~
26 ~~regulation, establish a revised fee schedule. The revised fee~~
27 ~~schedule shall assure that the fees collected reasonably cover but do~~
28 ~~not exceed the expenses and administration of implementing~~
29 ~~P.L.1977, c.419 (C.45:22A-21 et seq.)】 : the value of each dwelling~~
30 ~~unit proposed to be built as that value will be stated for the purposes~~
31 ~~of the New Home Warranty Program, or the proposed sales price of~~
32 ~~that dwelling unit if the warranty value is undeterminable,~~
33 ~~multiplied by three hundredths of one percent (.0003). All fees~~
34 ~~collected by the agency shall be forwarded to the State Treasurer~~
35 ~~and thereafter maintained in a separate, non-lapsing account, to be~~
36 ~~used solely for the purposes of defraying the State costs of~~
37 ~~rendering services and protections to homebuyers and homeowners~~
38 ~~in shared ownership communities, as required to be provided under~~
39 ~~P.L. , c. (C.) (pending before the Legislature as this bill),~~
40 ~~and “The Planned Real Estate Development Full Disclosure Act,”~~
41 ~~P.L.1977, c.419 (C.45:22A-21 et seq.), including the supplement to~~
42 ~~that act, P.L.1993, c.30 (C.45:22A-43 et seq.). The Bureau of~~
43 ~~Homebuyers Protection in the Division of Consumer Affairs of the~~
44 ~~Department of Law and Public Safety, and the Commission on~~
45 ~~Shared Ownership Communities shall be authorized to be~~
46 ~~reimbursed from the account required to be established pursuant to~~
47 ~~this section by the State Treasurer.~~

1 If the agency determines, upon a review that shall be undertaken
2 upon the cessation of developer control of the association pursuant
3 to section 5 of P.L.1993, c.30 (C.45:22A-47), that the estimated
4 average sales price per housing unit used to calculate the fees varied
5 by more than one percent from the actual average sales price of all
6 housing units, the agency shall collect from or remit to the
7 developer the difference between the two calculations.

8 f. (1) An engineering study required pursuant to paragraph (12)
9 of subsection a. of this section shall be conducted, and the results
10 thereof certified, by a person licensed in this State as a professional
11 engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.).

12 (2) The engineer who prepares the survey shall certify to the
13 agency whether, in his judgment, the building is in compliance with
14 the code standards adopted under the "Hotel and Multiple Dwelling
15 Law," P.L.1967, c.76 (C.55:13A-1 et seq.) and the "Uniform Fire
16 Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.) and shall list
17 all outstanding violations then existing in accordance with his
18 observation and judgment. The engineer shall be immune from tort
19 liability with regard to such certification and list in the same
20 manner and to the same extent as if he were a public employee
21 protected by the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

22 (3) If the agency finds there is a significant discrepancy between
23 the engineering survey submitted by the applicant and an
24 engineering survey submitted by any tenant or tenants currently
25 residing in the building, the agency shall investigate the matter in
26 order to determine the true state of facts prior to approving the
27 application. The agency may use its own staff or contract with
28 independent professionals, and may conduct hearings in accordance
29 with the "Administrative Procedure Act," P.L.1968, c.410
30 (C.52:14B-1 et seq.). Any cost to the agency of hiring independent
31 professionals shall be borne by the applicant developer at the
32 discretion of the agency.

33 (cf: P.L.1991, c.509, s.21)

34
35 34. Section 8 of P.L.1977, c.419 (C.45:22A-28) is amended to
36 read as follows:

37 8. a. A public offering statement shall disclose fully and
38 accurately the characteristics of the development, the nature and
39 extent of shared property ownership interests and obligations for
40 those interests, and the lots, parcels, units, or interests therein
41 offered, and shall make known to prospective purchasers all unusual
42 or material circumstances or features affecting the development.
43 The proposed public offering statement submitted to the agency
44 shall be in a form prescribed by its rules and regulations and shall
45 include the following:

46 (1) The name and principal address of the developer;

47 (2) A general narrative description of the development stating
48 the total number of lots, units, parcels, or interests in the offering,

1 and the total number of such interests planned to be sold, leased or
2 otherwise transferred;

3 (3) Copies of any management contract, lease of recreational
4 areas, or similar contract or agreement affecting the use,
5 maintenance, or access of all or any part of the development, with a
6 brief and simple narrative statement of the effect of each such
7 agreement upon a purchaser, and a statement of the relationship, if
8 any, between the developer and the managing agent or firm;

9 (4) (a) The significant terms of any encumbrances, easements,
10 liens, and restrictions, including zoning and other regulations,
11 affecting such lands and each unit, lot, parcel, or interest, and a
12 statement of all existing taxes and existing or proposed special taxes
13 or assessments which affect such lands; and

14 (b) In the case of a conversion subject to the provisions of the
15 "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et
16 al.), the information required pursuant to section 14 of P.L.1991,
17 c.509 (C.2A:18-61.53);

18 (5) (a) Relevant community information, including hospitals,
19 health and recreational facilities of any kind, streets, water supply,
20 levees, drainage control systems, irrigation systems, sewage
21 disposal facilities and customary utilities; and

22 (b) The estimated cost, size, date of completion, and
23 responsibility for construction and maintenance of existing and
24 proposed amenities which are referred to in connection with the
25 offering or disposition of any interest in the subdivision or
26 subdivided lands;

27 (6) A copy of the proposed budget for the operation and
28 maintenance of the common or shared elements or interests;

29 (7) Additional information required by the agency to assure full
30 and fair disclosure to prospective purchasers.

31 b. The public offering statement shall not be used for any
32 promotional purposes before registration of the development and
33 afterwards only if it is used in its entirety. No person may advertise
34 or represent that the agency approves or recommends the
35 development or dispositions therein. No portion of the public
36 offering statement may be underscored, italicized, or printed in
37 larger or heavier or different color type than the remainder of the
38 statement, unless the agency requires or permits it.

39 c. The agency may require the developer to alter or amend the
40 proposed public offering statement in order to assure full and fair
41 disclosure to prospective purchasers, and no change in the
42 substance of the promotional plan or plan of disposition or
43 development of a planned real estate development may be made
44 after registration without the approval of the agency. A public
45 offering statement shall not be current unless all amendments have
46 been incorporated.

47 d. The public offering statement shall, to the extent possible,
48 combine simplicity and accuracy of information, in order to

1 facilitate purchaser understanding of the totality of rights,
2 privileges, obligations and restrictions, comprehended under the
3 proposed plan of development. In reviewing such public offering
4 statement, the agency shall pay close attention to the requirements
5 of this subsection, and shall use its discretion to require revision of
6 a public offering statement which is unnecessarily complex,
7 confusing, or is illegible by reason of type size or otherwise.

8 e. On or after the effective date of P.L. , c. (C.)
9 (pending before the Legislature as this bill), the agency shall review
10 its processes for submission of the public offering statement, and
11 shall develop a streamlined process for form submission and
12 expedited review, in accordance with the purposes of
13 P.L. , c. (C.) (pending before the Legislature as this
14 bill). The process shall rely on electronic media submission to the
15 extent practicable, which submission shall have text-searchable
16 properties, and be in a format deemed acceptable by the agency.
17 Salient information shall be indexed, and an executive summary of
18 the salient information contained in the public offering statement, in
19 plain language, shall be placed at the front of the document,
20 including a summary of the rights, liabilities, obligations, and
21 governing form applicable to the association.

22 (cf: P.L.1991, c.509, s.22)

23
24 35. Section 10 of P.L.1977, c.419 (C.45:22A-30) is amended to
25 read as follows:

26 10. a. Upon receipt of the application for registration in proper
27 form, and accompanied by proper fee, the agency shall, within 10
28 business days, issue a notice of filing to the applicant. Within **[90]**
29 45 days from the date of the notice of filing, the agency shall enter
30 an order registering the development or rejecting the registration,
31 provided that the expedited method of submission has been initiated
32 by the agency and complied with in all aspects by the developer;
33 otherwise the agency shall enter an order registering the
34 development or rejecting the registration within 90 days. If no
35 order of rejection is entered within 45 or 90 days, respectively, from
36 the date of notice of filing, the development shall be deemed
37 registered unless the applicant has consented in writing to a delay.

38 b. If the agency affirmatively determines that the requirements
39 of section 9 of **[this act]** P.L.1977, c.419 (C.45:22A-29) have been
40 met, it shall enter an order registering the development.

41 c. If the agency determines upon inquiry and examination that
42 any of the requirements of section 9 of **[this act]** P.L.1977, c.419
43 (C.45:22A-29) have not been met, the agency shall notify the
44 applicant that the application for registration must be corrected in
45 such particulars, within 30 days, as designated by the agency. If the
46 requirements are not met within the time allowed, the agency may
47 enter an order rejecting the registration which shall include the
48 findings of fact upon which the order is based. The order rejecting

1 the registration shall not become effective until 20 days after the
2 lapse of the aforesaid specified period during which 20-day period
3 the applicant may petition for reconsideration and shall be entitled
4 to a hearing. Such order of rejection shall not take effect, in any
5 event, until such time as the hearing, once requested, has been given
6 to the applicant.

7 (cf: P.L.1977, c.419, s.10)

8
9 36. Section 1 of P.L.1993, c.30 (C.45:22A-43) is amended to
10 read as follows:

11 1. **【A】** Unless exempted as provided in this section, a
12 developer of a planned development, whether or not subject to the
13 registration requirements of section 6 of P.L.1977, c.419
14 (C.45:22A-26), shall organize or cause to be organized an
15 association whose obligation it shall be to manage the common
16 elements and facilities. The developer may be exempted from
17 forming an association upon a determination by the agency that
18 there will be no expenses in connection with maintenance of any of
19 the proposed common property in the community, and all such
20 common property consists solely of unimproved and unencumbered
21 open space. The association shall be formed on or before the filing
22 of the master deed or declaration of covenants and restrictions, and
23 may be formed as a for-profit corporation only if the development
24 will be a cooperative housing corporation issuing shares, or a
25 nonprofit corporation **【**, unincorporated association, or any other
26 form permitted by law**】** if a condominium or planned development.

27 (cf: P.L.1993, c.30, s.1)

28
29 37. Section 2 of P.L.1993, c.30 (C.45:22A-44) is amended to
30 read as follows:

31 2. a. Subject to the master deed, declaration of covenants and
32 restrictions or other instruments of creation, **【the】** an association as
33 that term is defined under section 3 of P.L. , c. (C.)
34 (pending before the Legislature as this bill), may do all that it is
35 legally entitled to do under the laws applicable to its form of
36 organization. In addition, an association of a shared ownership
37 community shall have the identical powers and obligations to those
38 as set forth in section 15 of P.L.1969, c.257 (C.46:8B-15) for
39 condominium associations.

40 b. **【The】** An association shall exercise its powers and discharge
41 its functions in a manner that protects and furthers the health, safety
42 and general welfare of the residents of the community. The actions
43 of an association concerning governance of its members shall
44 embody standards of due process, open governance, democracy, and
45 fundamental fairness, similar to those to which governmental bodies
46 are held, in all areas of governance, including, but not limited to

1 elections, access to records, open meetings, and alternate dispute
2 resolution, and shall be judged under these standards.

3 Actions of associations in matters not concerning governance
4 over its members shall be subject to the business judgment rule, but
5 implemented in a manner that protects and furthers the health,
6 safety and general welfare of the residents of the community.

7 c. **【The】** An association shall provide a fair and efficient
8 procedure for the resolution of disputes between individual unit
9 owners and the association, and between unit owners, which shall
10 be readily available as an alternative to litigation. Any costs of any
11 procedure provided shall be borne as a common expense by all of
12 the members of the association, and not assessed against any
13 individual owner or owners.

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

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

18
19 38. Section 3 of P.L.1993, c.30 (C.45:22A-45) is amended to
20 read as follows:

21 3. a. **【The form of administration of an】** An association
22 **【organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43)】**
23 as defined pursuant to section 3 of P.L. , c. (C.) (pending
24 before the Legislature as this bill) shall provide for the election of
25 **【an executive】** a governing board, elected by the association
26 members, and voting-eligible tenants where applicable, and
27 responsible to the members of the association pursuant to section 4
28 of P.L.1993, c.30 (C.45:22A-46), through which the powers of the
29 association shall be exercised and its functions performed. All
30 members of the association shall be permitted to be nominated for
31 and run for elected positions on the governing board. Elections
32 shall be held at least every two years, and shall be conducted with
33 strict adherence to democratic principles and fairness. If an
34 association has had no election which complies with the provisions
35 of this section before the effective date of P.L. , c. (C.)
36 (pending before the Legislature as this bill), other than the initial
37 election required pursuant to section 5 of P.L.1993. c.30 (C.45:22A-
38 47), then an election shall be held, to be monitored by the
39 Commission on Shared Ownership Communities, and in accordance
40 with regulations to be promulgated under P.L. , c. (C.)
41 (pending before the Legislature as this bill).

42 b. Subject to the master deed, declaration of covenants and
43 restrictions, bylaws or other instruments of creation, subsection d.
44 of this section, and the laws of the State, **【the executive】** a
45 governing board may act in all instances on behalf of the
46 association.

1 c. The members of **【the executive】** a governing board
2 appointed by the developer shall be liable as fiduciaries to the
3 owners for their acts or omissions.

4 d. During control of **【the executive】** a governing board by the
5 developer, copies of the annual audit of association funds shall be
6 available for inspection by owners or their authorized representative
7 at the project site.

8 (cf: P.L.2017, c.106, s.5)

9
10 39. Section 4 of P.L.1993, c.30 (C.45:22A-46) is amended to
11 read as follows:

12 4. The bylaws of the association, which shall initially be
13 recorded with the master deed shall include, in addition to any other
14 lawful provisions, the following:

15 a. A requirement that all meetings of the **【executive】**
16 governing board**【, except conference or working sessions at which**
17 **no binding votes are to be taken,】** shall be open to attendance by all
18 unit owners, and adequate notice of any such meeting shall be given
19 to all unit owners in such manner as the bylaws shall prescribe;
20 except that the **【executive】** governing board may exclude or restrict
21 attendance at those meetings, or portions of meetings, dealing with
22 (1) any matter the disclosure of which would constitute an
23 unwarranted invasion of individual privacy; (2) any pending or
24 anticipated litigation or contract negotiations; (3) any matters
25 falling within the attorney-client privilege, to the extent that
26 confidentiality is required in order for the attorney to exercise his
27 ethical duties as a lawyer, or (4) any matter involving the
28 employment, promotion, discipline or dismissal of a specific officer
29 or employee of the association. At each meeting required under this
30 subsection to be open to all unit owners, the participation of unit
31 owners in the proceedings or the provision of a public comment
32 session shall be **【at the discretion of the executive board】**
33 permitted, but may be limited in duration in accordance with
34 regulations which may be promulgated by the Commission on
35 Shared Ownership Communities, minutes of the proceedings shall
36 be taken, and copies of those minutes shall be made available to all
37 unit owners before the next open meeting, or within 60 days,
38 whichever is sooner, or shall be in accordance with any regulations
39 promulgated by the Commission on Shared Ownership
40 Communities.

41 b. The method of calling meetings of unit owners, the
42 percentage of unit owners or voting rights required to make
43 decisions and to constitute a quorum. The bylaws may,
44 nevertheless, provide that unit owners may waive notice of
45 meetings or may act by written agreement without meetings.

46 c. The manner of collecting from unit owners their respective
47 shares of common expenses and the method of distribution to the

1 unit owners of their respective shares of common surplus or such
2 other application of common surplus as may be duly authorized by
3 the bylaws.

4 d. The method by which the bylaws may be amended, provided
5 that no amendment shall be effective until recorded in the same
6 office as the then existing bylaws. The bylaws may also provide a
7 method for the adoption, amendment and enforcement of reasonable
8 administrative rules and regulations relating to the operation, use,
9 maintenance and enjoyment of the units and of the common
10 elements, including limited common elements.

11 Notwithstanding any provision of P.L.1993, c.30 (C.45:22A-43
12 et seq.) to the contrary, all bylaws and association documents of an
13 association shall comply with the minimum requirements of
14 sections 16 and 18 of P.L. _____, c. _____ (C. _____) (pending before the
15 Legislature as this bill) for such documents, or shall be deemed to
16 include such provisions by incorporation through this section.

17 (cf: P.L.1993, c.30, s.4)

18
19 40. Section 5 of P.L.1993, c.30 (C.45:22A-47) is amended to
20 read as follows:

21 5. a. Upon the sale of 20 percent of the lots, parcels, units or
22 interests to be created in the community, the developer shall arrange
23 for the members of the association to hold an election for an
24 owners' coordinating council, which group shall be comprised of at
25 least three owners other than the developer. The council shall be a
26 steering committee for owners' complaints and to provide guidance
27 to the developer and association on issues of importance to the
28 owners. In addition, the council shall coordinate the elections to the
29 association governing board when owners may be elected to that
30 board in accordance with this section, and shall serve as the owners'
31 finance committee during the period of developer control. All
32 elections to this group shall comply with election guidelines to be
33 promulgated by the Commission on Shared Ownership
34 Communities established pursuant to section 5 of
35 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
36 bill), provided that only members elected by the unit owners, other
37 than the developer or developer's appointees to the governing
38 board, shall serve on the council, and the council's decisions shall
39 be free of any control by the developer or any member of the
40 governing board appointed by the developer. Any vacancies on the
41 council shall be filled within 30 days by current council members,
42 and in the case of any tie votes by such council members, by the
43 vote of the unit owners other than the developer within 60 days
44 after the vacancy occurs.

45 Irrespective of the time set for developer control of the
46 association provided in the master deed, declaration of covenants
47 and restrictions, or other instruments of creation, control of the

1 voting interests of the governing board of the association shall be
2 surrendered to the owners in the following manner:

3 (1) Sixty days after conveyance of 25 percent of the lots,
4 parcels, units or interests, not fewer than 25 percent of the members
5 of the **【executive】 governing** board shall be elected by the owners,
6 and voting-eligible tenants where applicable, in accordance with
7 election procedures to be promulgated by the Commission on
8 Shared Ownership Communities.

9 (2) Sixty days after conveyance of 50 percent of the lots,
10 parcels, units or interests, not fewer than 40 percent of the members
11 of the **【executive】 governing** board shall be elected by the owners,
12 and voting-eligible tenants where applicable.

13 (3) Sixty days after conveyance of 75 percent of the lots,
14 parcels, units or interests, the developer's control of the **【executive】**
15 governing board shall terminate, at which time the owners, and
16 voting-eligible tenants where applicable, shall elect the entire
17 **【executive】 governing** board; except that the developer may retain
18 the selection of one **【executive】 governing** board member
19 representing his interests as a unit owner so long as there are any
20 units remaining unsold in the regular course of business. The
21 retention by the developer of one member on the governing board
22 shall cease if no units remain which are being offered for sale to the
23 public. Unsold units converted to rental units by a developer shall
24 create a presumption that the developer has ceased selling, and in
25 that event, any tenant of a developer-owned unit shall be deemed to
26 be a member of the association as if the tenant owns the unit.

27 b. The percentages specified in subsection a. of this section
28 shall be calculated upon the basis of the whole number of units
29 entitled to membership in the association. The bylaws of the
30 association shall specify the number or proportion of votes of all
31 units conveyed to owners that shall be required for the election of
32 executive board members. Unless the bylaws provide for an
33 alternate approach to allocating votes pursuant to paragraph (9) of
34 subsection c. of section 6 of P.L.2017, c.106 (C.45:22A-45.2), each
35 unit conveyed to an owner shall be entitled to one vote regardless of
36 the number of association members, and voting-eligible tenants
37 where applicable, residing in a unit. A developer may surrender
38 control of the executive board of the association before the time
39 specified in subsection a. of this section, if the association
40 members, and voting-eligible tenants where applicable, agree by a
41 majority vote to assume control.

42 c. Upon assumption by the owners of control of the
43 **【executive】 voting interests of the governing** board of the
44 association, the developer shall deliver to the association all items
45 and documents pertinent to the association, such as, but not limited
46 to, a copy of the master deed, declaration of covenants and
47 restrictions, documents of creation of the association, bylaws,

1 minute book including all minutes, any rules and regulations,
2 association funds and an accounting therefor, all personal property,
3 insurance policies, government permits, a membership roster and all
4 contracts and agreements relative to the association within 60 days
5 of that transition date, established pursuant to this section. In
6 addition, all similar items required to be turned over by a developer
7 of a condominium pursuant to section 2 of P.L.1979, c.157
8 (C.46:8B-12.1) shall be required to be turned over by a developer of
9 a shared ownership community to the association.

10 d. The association when controlled by the owners, and voting-
11 eligible tenants where applicable, shall not take any action that
12 would be detrimental to the sale of units by the developer, and shall
13 continue the same level of maintenance, operation and services as
14 immediately prior to their assumption of control, until the last unit
15 is sold.

16 e. From the time of conveyance of 75 percent of the lots,
17 parcels, units, or interests, until the last lot, parcel, unit, or interest
18 in the development is conveyed in the ordinary course of business,
19 the master deed, bylaws or declaration of covenants and restrictions
20 shall not require that more than 75 percent of the votes entitled to
21 be cast thereon be cast in the affirmative for a change in the bylaws
22 or regulations of the association.

23 f. The developer shall not be permitted to cast any votes
24 allocated to unsold lots, parcels, units, or interests, in order to
25 amend the master deed, bylaws, or any other document, for the
26 purpose of changing the permitted use of a lot, parcel, unit, or
27 interest, or for the purpose of reducing the common elements or
28 facilities.

29 g. If the council of owners authorized in subsection a. of this
30 section is established and there has been substantial completion of
31 the common elements and public improvements in any phase of the
32 shared ownership community which are not covered by the
33 performance or maintenance guarantees posted with any
34 governmental agencies having jurisdiction, the council shall request
35 the association to cause such common elements and improvements
36 to be inspected and evaluated for compliance with the developer's
37 warranty and construction obligations, with the assistance of
38 qualified independent engineering and legal consultants selected by
39 the council. The fees for such consultants shall be paid from funds
40 contributed by the developer.

41 (1) Public improvements to be dedicated to any governmental
42 entity shall be exempt from any direct warranty or construction
43 defect claims by the association or the unit owners other than the
44 developer. Acceptance of any such public improvements by the
45 governmental entity to which they are to be dedicated shall be
46 deemed conclusive evidence that such improvements have been
47 satisfactorily completed and the developer shall have no further
48 obligation with respect to those improvements, either to the

1 association, to any unit owners other than the developer, or to any
2 governmental agency having jurisdiction.

3 (2) Within 120 days after the association's receipt of any request
4 for inspection of any phase of the completed common elements or
5 other improvements, the council shall require its engineering
6 consultant to inspect the particular completed improvements and
7 render a written evaluation of them to the council. A copy of the
8 final report, following the council's review of the initial evaluation,
9 shall be furnished to the developer within 30 days after the
10 committee's receipt of the report. Thereafter, the council and the
11 developer shall conduct one or more joint inspections of the
12 common elements and other improvements covered by the request
13 and pursue good faith negotiations to resolve any warranty or
14 construction defect claims against the developer. All fees and
15 related expenses incurred by the council for engineering and legal
16 consultants shall be paid promptly by the association from available
17 designated funds.

18 (3) If a settlement agreement is finalized between the council
19 and the developer, the developer-controlled executive board shall
20 have the authority to execute an agreement and to release the
21 declarant from all liability with respect to the completed common
22 elements and improvements, subject to such terms and conditions as
23 may be contained in the agreement. Any such settlement agreement
24 and release shall be legally binding upon the association and the
25 unit owners, provided that its form is approved by the independent
26 legal counsel retained by the council on behalf of the association.

27 (4) If no settlement agreement is approved by the council within
28 180 days after the request for inspection, the parties shall be
29 obligated to proceed to mediation within 30 days thereafter in
30 accordance with section 10 of P.L. , c. (C.) (pending
31 before the Legislature as this bill). If no settlement is reached
32 through mediation within 15 days after commencement of same,
33 then the parties shall promptly proceed to non-binding arbitration of
34 any remaining issues in accordance with rules promulgated by the
35 director. Such mediation and non-binding arbitration shall be
36 conditions precedent to any litigation of the warranty and
37 construction defect claims against the developer. All professional
38 fees and expenses reasonably incurred by the association with
39 regard to the mediation or arbitration, or both, shall be borne by the
40 owners, including the developer, in the same manner as common
41 expenses are allocated and paid by the association promptly upon
42 the receipt of written authorization of the council.

43 (5) In the event that no settlement agreement and releases are
44 executed with respect to any completed common elements or
45 improvements during the period of developer control of the
46 governing board of the association, any statutes of limitation or
47 repose applicable to that association concerning common elements,
48 including, but not limited to statutory warranties, shall be extended

1 for a period of one year after the assumption of control of the
2 governing board by owners other than the developer.

3 (6) The procedures set forth in this section shall also apply to
4 and be binding upon the developer and the association after the unit
5 owners, other than the developer, assume control of the governing
6 board of the association; provided, however, that the governing
7 board after that transition shall not be bound by the
8 recommendations of the council of owners. The governing board
9 controlled by the owners may vote to abolish the council of owners
10 at any time after the owners have assumed control of the governing
11 board.

12 (cf: P.L.2017, c.106, s.8)

13
14 41. Section 6 of P.L.1993, c.30 (C.45:22A-48) is amended to
15 read as follows:

16 6. The **【Commissioner of Community Affairs】** Commission on
17 Shared Ownership Communities shall cause to be prepared and
18 distributed, for the use and guidance of associations, **【executive】**
19 governing boards and **【administrators】** professionals hired by such
20 boards to assist them, explanatory materials and guidelines to assist
21 them in achieving proper and timely compliance with the
22 requirements of P.L.1993, c.30 (C.45:22A-43 et al.) and with the
23 requirements of P.L. , c. (C.) (pending before the
24 Legislature as this bill). Such guidelines may include the text of
25 model bylaw provisions suggested or recommended for adoption.

26 The commission shall also make available, on an Internet web
27 site maintained by it, descriptions of the outcomes of dispute
28 resolution procedures overseen by the commission, indexed by
29 subject matter.

30 The commission shall publish a quarterly newsletter to be
31 furnished to any member of any association requesting it and shall
32 also publish the newsletter electronically for viewing on the
33 Internet.

34 **【Failure or refusal of an association or executive board to make**
35 **proper amendment or supplementation of its bylaws prior to the**
36 **effective date of P.L.1993, c.30 (C.45:22A-43 et al.) shall not,**
37 **however, affect their obligation of compliance therewith on and**
38 **after that effective date.】** Any owner or tenant of an owner in a
39 shared ownership community may seek the assistance of the
40 Commission on Shared Ownership Communities pursuant to section
41 6 of P.L. , c. (C.) (pending before the Legislature as this
42 bill) to address the failure of an association to make proper
43 amendment or supplementation of its bylaws in order to comply
44 with any statutory requirements.

45 (cf: P.L.1993, c.30, s.6)

1 42. Section 14 of P.L.1979, c.157 (C.46:8B-14) is amended to
2 read as follows:

3 14. The association, acting through its officers or governing
4 board, shall be responsible for the performance of the following
5 duties, the costs of which shall be common expenses:

6 (a) The maintenance, repair, replacement, cleaning and
7 sanitation of the common elements.

8 (b) The assessment and collection of funds for common
9 expenses and the payment thereof.

10 (c) The adoption, distribution, amendment and enforcement of
11 rules governing the use and operation of the condominium and the
12 condominium property and the use of the common elements,
13 including but not limited to the imposition of reasonable fines,
14 assessments and late fees upon unit owners, if authorized by the
15 master deed or bylaws, subject to the right of a majority of unit
16 owners to change any such rules.

17 (d) The maintenance of insurance against loss by fire or other
18 casualties normally covered under broad-form fire and extended
19 coverage insurance policies as written in this State, covering all
20 common elements and all structural portions of the condominium
21 property and the application of the proceeds of any such insurance
22 to restoration of such common elements and structural portions【 if
23 such restoration shall otherwise be required under the provisions of
24 this act or the master deed or bylaws】.

25 (e) The maintenance of insurance against liability for personal
26 injury and death for accidents occurring within the common
27 elements whether limited or general and the defense of any actions
28 brought by reason of injury or death to person, or damage to
29 property occurring within such common elements and not arising by
30 reason of any act or negligence of any individual unit owner.

31 (f) The master deed or bylaws may require the association to
32 protect blanket mortgages, or unit owners and their mortgagees, as
33 their respective interest may appear, under the policies of insurance
34 provided under clauses (d) and (e) of this section, or against such
35 risks with respect to any or all units, and may permit the assessment
36 and collection from a unit owner of specific charges for insurance
37 coverage applicable to his unit.

38 (g) The maintenance of 【accounting】 records, in accordance
39 with generally accepted accounting principles, open to inspection at
40 reasonable times by unit owners. Such records shall include:

41 (i) A record of all receipts and expenditures.

42 (ii) An account for each unit setting forth any shares of common
43 expenses or other charges due, the due dates thereof, the present
44 balance due, and any interest in common surplus.

45 (iii) all items required pursuant to section 19 of
46 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
47 bill).

1 (h) Nothing herein shall preclude any unit owner or other person
2 having an insurable interest from obtaining insurance at his own
3 expense and for his own benefit against any risk whether or not
4 covered by insurance maintained by the association.

5 (i) Such other duties as may be set forth in the master deed or
6 bylaws.

7 (j) An association shall exercise its powers and discharge its
8 functions in a manner that protects and furthers or is not
9 inconsistent with the health, safety and general welfare of the
10 residents of the community.

11 (k) An association shall provide a fair and efficient procedure
12 for the resolution of **【housing-related】** disputes between individual
13 unit owners and the association, and between unit owners, which
14 shall be readily available as an alternative to litigation. Any costs
15 associated with the procedure shall be borne by the association as a
16 common expense, and no costs shall be assessable against any
17 individual owner or owners. A person other than an officer of the
18 association, a member of the governing board or a unit owner
19 involved in the dispute shall be made available to resolve the
20 dispute. **【A unit owner may notify the Commissioner of Community**
21 **Affairs if an association does not comply with this subsection. The**
22 **commissioner shall have the power to order the association to**
23 **provide a fair and efficient procedure for the resolution of disputes】**
24 A unit owner who has availed himself of the dispute resolution
25 procedures provided by his association, but who does not consider
26 the matter resolved, may file a request for dispute resolution
27 services with the Commission on Shared Ownership Communities,
28 established pursuant to section 5 of P.L. , c. (C.)
29 (pending before the Legislature as this bill).

30 (cf: P.L.1996, c.79, s.2)

31
32 43. Section 12 of P.L.1969, c.257 (C.46:8B-12) is amended to
33 read as follows:

34 12. The association provided for by the master deed shall be
35 responsible for the administration and management of the
36 condominium and condominium property, including but not limited
37 to the conduct of all activities **【of common interest to】** on the
38 common property of the unit owners. The association may be any
39 entity recognized by the laws of New Jersey, including but not
40 limited to a business corporation or a nonprofit corporation.
41 Condominium associations established after the effective date of
42 P.L. , c. (C.) (pending before the Legislature as this bill)
43 shall be incorporated as nonprofit corporations.

44 (cf: P.L.1969, c.257, s.12)

45
46 44. Section 2 of P.L.1979, c.157 (C.46:8B-12.1) is amended to
47 read as follows:

1 2. a. **【When】** For associations formed prior to the effective
2 date of P.L. , c. (C.) (pending before the Legislature as
3 this bill), when unit owners other than the developer own 25% or
4 more of the units in a condominium that will be operated ultimately
5 by an association, the unit owners other than the developer shall be
6 entitled to elect not less than 25% of the members of the governing
7 board or other form of administration of the association. Unit
8 owners other than the developer shall be entitled to elect not less
9 than 40% of the members of the governing board or other form of
10 administration upon the conveyance of 50% of the units in a
11 condominium. Unit owners other than the developer shall be
12 entitled to elect all of the members of the governing board or other
13 form of administration upon the conveyance of 75% of the units in a
14 condominium. However, when some of the units of a condominium
15 have been conveyed to purchasers and none of the others are being
16 constructed or offered for sale by the developer in the ordinary
17 course of business, the unit owners other than the developer shall be
18 entitled to elect all of the members of the governing board or other
19 form of administration.

20 Notwithstanding any of the provisions of subsection a of this
21 section, the developer shall be entitled to elect at least one member
22 of the governing board or other form of administration of an
23 association as long as the developer holds for sale in the ordinary
24 course of business one or more units in a condominium operated by
25 the association.

26 b. Within 30 days after the unit owners other than the
27 developer are entitled to elect a member or members of the
28 governing board or other form of administration of an association,
29 the association shall call, and give not less than 20 days' nor more
30 than 30 days' notice of, a meeting of the unit owners to elect the
31 members of the governing board or other form of administration.
32 The meeting may be called and the notice given by any unit owner
33 if the association fails to do so.

34 c. If a developer holds one or more units for sale in the
35 ordinary course of business, none of the following actions may be
36 taken without approval in writing by the developer:

37 (1) Assessment of the developer as a unit owner for capital
38 improvements.

39 (2) Any action by the association that would be detrimental to
40 the sales of units by the developer. However, an increase in
41 assessments for common expenses without discrimination against
42 the developer shall not be deemed to be detrimental to the sales of
43 units.

44 On or after the after the effective date of P.L. , c. (C.)
45 (pending before the Legislature as this bill), elections for and
46 control of a governing board of an association shall be in
47 accordance with section 5 of P.L.1993, c.30 (C.45:22A-47).

1 d. [Prior to, or not more than 60 days after, the time that unit
2 owners other than the developer elect a majority of the members of
3 the governing board or other form of administration of an
4 association, the developer shall relinquish control of the
5 association, and the unit owners shall accept control.
6 Simultaneously,] When control of an association is required to be
7 relinquished by a developer pursuant to section 5 of
8 P.L.1993, c.30 (C.45:22A-47), the developer shall deliver to the
9 association all property of the unit owners and of the association
10 held or controlled by the developer, including, but not limited to,
11 the following items, if applicable, as to each condominium operated
12 by the association:

13 (1) A photocopy of the master deed and all amendments thereto,
14 certified by affidavit of the developer, or an officer or agent of the
15 developer, as being a complete copy of the actual master deed.

16 (2) A certified copy of the association's articles of incorporation,
17 or if not incorporated, then copies of the documents creating the
18 association.

19 (3) A copy of the bylaws.

20 (4) The minute books, including all minutes, and other books
21 and records of the association, if any.

22 (5) Any house rules and regulations which have been
23 promulgated.

24 (6) Resignations of officers and members of the governing
25 board or other form of administration who are required to resign
26 because the developer is required to relinquish control of the
27 association.

28 (7) An accounting for all association funds, including capital
29 accounts and contributions.

30 (8) Association funds or control thereof.

31 (9) All tangible personal property that is property of the
32 association, represented by the developer to be part of the common
33 elements or ostensibly part of the common elements, and an
34 inventory of that property.

35 (10) A copy of the plans and specifications utilized in the
36 construction or remodeling of improvements and the supplying of
37 equipment to the condominium and in the construction and
38 installation of all mechanical components serving the improvements
39 and the site, with a certificate in affidavit form of the developer, his
40 agent, or an architect or engineer authorized to practice in this State
41 that such plans and specifications represent, to the best of their
42 knowledge and belief, the actual plans and specifications utilized in
43 the construction and improvement of the condominium property and
44 for the construction and installation of the mechanical components
45 serving the improvements. If the condominium property has been
46 declared a condominium more than 3 years after the completion of
47 construction or remodeling of the improvements, the requirements
48 of this paragraph shall not apply.

1 (11) Insurance policies.

2 (12) Copies of any certificates of occupancy which may have
3 been issued for the condominium property.

4 (13) Any other permits issued by governmental bodies applicable
5 to the condominium property in force or issued within 1 year prior
6 to the date the unit owners other than the developer take control of
7 the association.

8 (14) All written warranties of the contractor, subcontractors,
9 suppliers, and manufacturers, if any, that are still effective.

10 (15) A roster of unit owners and their addresses and telephone
11 numbers, if known, as shown on the developer's records.

12 (16) Leases of the common elements and other leases to which
13 the association is a party.

14 (17) Employment contracts, management contracts, maintenance
15 contracts, contracts for the supply of equipment or materials, and
16 service contracts in which the association is one of the contracting
17 parties and maintenance contracts and service contracts in which the
18 association or the unit owners have an obligation or responsibility,
19 directly or indirectly to pay some or all of the fee or charge of the
20 person or persons performing the service.

21 (18) All other contracts to which the association is a party.

22 (cf: P.L.1979, c.157, s.2)

23

24 45. Section 15 of P.L.1979, c.157 (C.46:8B-15) is amended to
25 read as follows:

26 15. Subject to the provisions of the master deed, the bylaws,
27 rules and regulations and the provisions of this act or other
28 applicable law, the association shall have the following powers:

29 (a) Whether or not incorporated, the association shall be an
30 entity which shall act through its officers and may enter into
31 contracts, bring suit and be sued. If the association is not
32 incorporated, it may be deemed to be an entity existing pursuant to
33 this act and a majority of the members of the governing board or of
34 the association, as the case may be, shall constitute a quorum for the
35 transaction of business. Process may be served upon the association
36 by serving any officer of the association or by serving the agent
37 designated for service of process. Service of process upon the
38 association shall not constitute service of process upon any
39 individual unit owner.

40 (b) The association shall have access to each unit from time to
41 time during reasonable hours as may be necessary for the
42 maintenance, repair or replacement of any common elements
43 therein or accessible therefrom or for making emergency repairs
44 necessary to prevent damage to common elements or to any other
45 unit or units. The association may charge the unit owner for the
46 repair of any common element damaged by the unit owner or his
47 tenant.

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

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

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

40 All funds collected by an association shall be maintained
41 separately in the association's name. For investment purposes only,
42 reserve funds may be commingled with operating funds of the
43 association. Commingled operating and reserve funds shall be
44 accounted for separately, and a commingled account shall not, at
45 any time, be less than the amount identified as reserve funds. A
46 manager or business entity managing a condominium, or an agent,
47 employee, officer, or director of an association, shall not
48 commingle any association funds with his or her funds or with the

1 funds of any other condominium association or the funds of another
2 association as defined in section 3 of P.L.1977, c.419 (C.45:22A-
3 23).

4 【If】 Other than during the period of developer control as set
5 forth in section 5 of P.L.1993, c.30 (C.45:22A-47), if authorized by
6 the master deed or bylaws, the association may levy and collect a
7 capital contribution, membership fee or other charge upon the
8 【initial sale or subsequent】 resale of a unit, which collection shall
9 be earmarked for the purpose of maintenance of or improvements to
10 common elements to defray common expenses 【or otherwise】,
11 provided that such charge shall not exceed nine times the amount of
12 the most recent monthly common expense assessment for that unit.

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

17 A fine for a violation or a continuing violation of the master
18 deed, bylaws or rules and regulations shall not exceed 【the
19 maximum monetary penalty permitted to be imposed for a violation
20 or a continuing violation under section 19 of the "Hotel and
21 Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-19)】 \$50 per
22 violation per day , or a total of \$2,500 for continuing violations.

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

27 A fine shall not be imposed unless the association has filed the
28 required information with the Commission on Shared Ownership
29 Communities pursuant to section 10 of P.L. , c. (C.)
30 (pending before the Legislature as this bill) and the unit owner is
31 given written notice of the action taken and of the alleged basis for
32 the action, and is advised of the right to participate in a dispute
33 resolution procedure in accordance with subsection (k) of section 14
34 of P.L.1969, c.257 (C.46:8B-14), and advised of the further right to
35 file an appeal with the Commission on Shared Ownership
36 Communities. A unit owner who does not believe that the dispute
37 resolution procedure has satisfactorily resolved the matter shall not
38 be prevented from seeking dispute resolution with the Commission
39 on Shared Ownership Communities in the manner provided under
40 section 5 of P.L. , c. (C.) (pending before the Legislature
41 as this bill), or from seeking a judicial remedy in a court of
42 competent jurisdiction, in which case the filing of a lien for any fine
43 imposed shall be postponed until a final determination has been
44 made concerning the fine by either the commission or the court.

45 (g) Such other powers as may be set forth in the master deed or

1 bylaws, if not prohibited by P.L.1969, c.257 (C.46:8B-1 et seq.) or
2 any other law of this State.
3 (cf: P.L.2007, c.165, s.1)
4

5 46. This act shall take effect immediately.
6
7

8 STATEMENT
9

10 It has been more than 30 years since the Legislature enacted
11 "The Planned Real Estate Development Full Disclosure Act,"
12 (PREDFDA), P.L.1977, c.419 (C.45:22A-21 et seq.) to provide
13 State oversight of the marketing of planned developments to
14 prospective purchasers, through a review of documents and
15 advertisements, as well as requiring that certain disclosures be made
16 by a developer to a buyer. Marketing techniques are important
17 because membership in a homeowner association is mandatory for a
18 purchaser of a home in community which has shared property and
19 facilities, such as a condominium, cooperative, or a single family
20 home in a planned development. The shared property of such
21 communities is owned collectively by all of the individual home
22 purchasers. These communities are referred to as "shared
23 ownership communities" in the bill and are often known as common
24 interest communities.

25 It has also been more than 10 years since the Assembly Task
26 Force to Study Homeowners' Associations released its report
27 containing more than 30 recommendations calling for changes in
28 the laws, in order to provide more protections for homeowners.
29 This bill addresses most of those recommendations, as well as
30 updating the laws requiring disclosure by developers and clarifying
31 the powers and obligations of governing boards of associations and
32 the rights of owners living in such communities.

33 The bill revises the manner in which information should be
34 provided prospective purchasers through the Public Offering
35 Statement, (POS) a document required to be provided to prospective
36 purchasers by developers of such communities. Although New
37 Jersey's statutes require certain disclosures by a developer during
38 the sales phase of shared ownership communities, these disclosures
39 have too often been inadequate to properly inform prospective
40 purchasers. Items which are likely to be of extreme importance to a
41 purchaser, such as obligations, governance structures, potential
42 future liabilities, restrictions, or, even in some cases, hidden loans
43 on the part of a developer to the association, may be buried deep
44 within the document, and not disclosed adequately, if at all. The
45 sheer volume of information, which varies widely by developers on
46 matters which could be standardized, also hinders adequate review
47 by the State.

1 The bill requires the POS, and the registration of developments
2 process, to be revised and streamlined. A developer will be
3 required to submit information on standardized forms and in an
4 electronic format. Governance structures will be standardized and
5 developers allowed to highlight variations that they wish to apply.
6 Processing times for registrations of developments will be reduced
7 under the bill from 90 to 45 days for standardized submissions. The
8 information in the Public Offering Statement to be disclosed to a
9 prospective purchaser will be revised to be quickly accessed by the
10 reader, as well as indexed under logical headings, such as pets,
11 parking, restrictions and fees. An executive summary of the
12 offering is required to be made in plain language, explaining the
13 rights, liabilities, obligations and governing form applicable to the
14 association.

15 The bill also addresses the problem that planned communities
16 with fewer than 100 units have been exempted from registration
17 under the act. This has been interpreted by the administering
18 agency as exempting developers from providing a POS, thus
19 providing no protections for purchasers in smaller communities.
20 The exemption has also been extended by regulations to all low and
21 moderate income (*Mount Laurel*) communities of any size.
22 Exemption from the PREDFDA also clouds many other issues, such
23 as when a developer of a planned community must turn over the
24 assets to the homeowners. The bill removes these exemptions, and
25 requires a Public Offering Statement for every prospective
26 purchaser in a planned community. The regressive flat rate
27 development charge currently charged to developers of planned
28 communities is replaced under the bill with a per unit fee of 3/100
29 of one percent (.0003) of the sales price. These fees are currently
30 required to be used to defray the costs of the State's review under
31 the statute, and will continue to be used for that purpose, as well as
32 to offset costs for other homeowner protections added by the bill.
33 The change from a flat rate fee to a per unit fee will result in lower
34 fees on lower priced homes, and in most instances will result in
35 decreased fees being paid per development than is the case now.

36 In addition, the bill addresses problems which arise in what may
37 be termed the "governance" stage of a homeowners' association.
38 After the developer has sold at least 75 percent of the homes
39 planned for the community, total control of the management of the
40 commonly-owned property is transferred from the developer to the
41 home owners in the community. Experience shows that owners are
42 not adequately prepared for this event.

43 The bill allows owners to have earlier exposure to operational
44 issues and input into governance matters, as well as requires boards
45 to adopt principles of democratic and transparent governance. The
46 bill requires the creation of an owners' coordinating council in each
47 association, consisting of at least three owners, during the time
48 period that the developer controls the voting interest of the

1 association governing board. The owners' coordinating council will
2 function as a steering committee for owners, and serve as the
3 election monitor when owners other than the developer are entitled
4 by statute to be elected as voting members of the governing board.
5 In addition, the owners' council will be permitted to bring claims to
6 a commission formed under the bill, on matters affecting
7 construction deficiencies in the common elements during the period
8 of developer control. The inability of owners to file warranty
9 claims concerning defects in common elements was found to be a
10 problem by the State Commission of Investigation in its report of
11 abuses in the new home construction industry.

12 The bill addresses the inconsistency in various statutes affecting
13 owners' rights in different types of shared ownership communities,
14 by amending the laws to eliminate these inconsistencies.

15 The bill creates a commission in, but not of, the Department of
16 Law and Public Safety, to serve as a State resource center, liaison
17 and educational resource to owners and their shared ownership
18 community associations, and to coordinate low cost, reliable
19 alternative dispute resolution (ADR) services to these associations.
20 The commission will also serve as a hearing entity concerning
21 violations of statutory law pertaining to associations. The
22 commission is modeled after a very successful program created by
23 Montgomery County, Maryland for homeowner associations under
24 its jurisdiction.

25 The bill addresses a critical need of the many owners whose
26 associations have not provided any ADR or ADR which is not
27 impartial. Many associations have adopted a process too biased or
28 expensive to serve as a viable alternative to litigation. Because
29 associations can charge each owner the cost of the board's attorney
30 as a common expense, many boards are quick to invite litigation,
31 rather than amicably resolve disputes. In some instances, even
32 when a board's actions blatantly violate bylaws, or are flagrantly
33 illegal, State and local officials are often unwilling or unable to get
34 involved, citing the "private" nature of such communities. This
35 places an undue financial burden on individual owners, many of
36 whom are senior citizens on fixed incomes.

37 The bill also addresses the general lack of information about
38 community associations, and a lack of standards for the manner in
39 which they may operate. The commission created by the bill and
40 the State entity responsible for oversight of marketing of new
41 homes is charged with creating a booklet providing detailed
42 information to owners concerning general information, State and
43 federal laws, resources available, and the standards of governance
44 established for association governing boards. The commission will
45 also be responsible for posting the information to a web site.

46 The commission is also required under the bill to promulgate
47 standards for transparent and democratic governance in the
48 operation of shared ownership communities. The standards may be

1 more specific than the provisions of the bill, but must comport with
2 the Legislature's intent to foster open, democratic processes in such
3 communities.

4 The funding for the activities of the commission and the
5 alternative dispute resolution services will come from fees already
6 collected and earmarked for protections of owners under the "The
7 Planned Real Estate Development Full Disclosure Act." The bill
8 requires that all associations provide certain information annually to
9 the Commission on Shared Ownership Communities. There is no
10 fee to file under the bill, but those associations that do not provide
11 the information will not be eligible as qualified private communities
12 to seek reimbursement from their municipality for services provided
13 to them, such as trash, leaf and snow removal, and, in addition, will
14 not be permitted to impose fines upon members, or to receive
15 approval to file liens based on fines imposed.

16 In order to recognize the governmental nature of homeowners
17 associations, and to provide the best enforcement of statutory
18 protections for prospective homebuyers in shared ownership
19 communities, the bill moves the responsibility for the "The Planned
20 Real Estate Development Act" to a new bureau within the Division
21 of Consumer Affairs in the Department of Law and Public Safety,
22 to be known as the "Bureau of Homebuyers Protection." The
23 Division of Consumer Affairs currently has significant experience
24 in administering consumer protection programs; for example it has
25 the responsibility for overseeing the "Home Improvement
26 Contractor's Registration Act" and "the consumer fraud act." In
27 addition, relocating homebuyer protections will help to minimize
28 conflicts of interests concerning builders under other programs in
29 the Department of Community Affairs, such as its role as the
30 enforcer of construction codes, licensing of code inspectors, and
31 overseeing the "New Home Warranty Program."