

ASSEMBLY, No. 3242

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Hunterdon, Somerset and Warren)

SYNOPSIS

Requires developer under “The Planned Real Estate Full Disclosure Act” to post bond with DCA and provides for more accountability to owners in common interest community.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning planned real estate developments and
2 supplementing P.L.1977, c.419 (C.45:22A-21 et seq.) and
3 P.L.1977, c.467 (C.46:3B-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
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8 1. a. An association required to be formed pursuant to section
9 1 of P.L.1993, c.30 (C.45:22A-43), or an association which
10 collects fees from owners for the repair and maintenance of
11 common elements, prior to making an annual assessment, shall
12 prepare and adopt an operating budget which shall provide for any
13 and all common expenses to be incurred during the year, as well as
14 adequate reserves for repair and replacement of the common
15 elements and facilities.

16 For the purposes of this section, items for which adequate
17 reserves are required shall include, but not be limited to, roof
18 replacement, building painting, and pavement resurfacing,
19 regardless of the amount of deferred maintenance expense or
20 replacement cost, and any other item for which the deferred
21 maintenance expense or replacement cost exceeds \$10,000. The
22 amount to be reserved shall be computed by means of a formula
23 which is based upon the estimated remaining useful life and
24 estimated replacement cost or deferred maintenance expense of
25 each reserve item. The association may adjust replacement reserve
26 assessments annually to take into account any changes in estimates
27 or extension of the useful life of a reserve item caused by deferred
28 maintenance. This subsection shall not apply to an adopted budget,
29 other than a budget prepared by a developer, in which the members
30 of an association have determined, by a majority vote at a duly
31 called meeting of the association, to provide no reserves or less
32 reserves than required by this subsection.

33 b. No budget prepared by the developer or by the executive
34 board while under the control of the developer shall contain any
35 payment or subsidy by the developer that artificially influences the
36 monthly assessment, unless the details are fully disclosed in the
37 public offering statement to the satisfaction of the agency.

38 c. While the developer maintains a majority of the executive
39 board, the executive board shall have an annual audit of association
40 funds prepared by an independent public accountant, a copy of
41 which shall be delivered to each unit owner within 90 days of the
42 expiration of the fiscal year of the association. The audit shall cover
43 the operating budget and reserve accounts. After control of the
44 association has transitioned to the owners as required pursuant to
45 P.L.1977, c.419 (C.45:22A-21 et seq.), the executive board shall
46 continue to maintain reserve accounts and have audits of association
47 funds, but shall be permitted to reduce the frequency to once every

1 three years, if such reduction is approved by a majority vote of all
2 of the members of the association.

3 d. Until the expiration of any management contracts entered
4 into while the developer maintains a majority of the executive
5 board, the developer shall ensure that a bond, or other guarantee
6 acceptable to the agency, is posted. For the first year of operation,
7 the bond or other guarantee shall be in an amount equal to the
8 annual budget. For the second year and for succeeding years, the
9 bond or other guarantee shall be in an amount equal to the annual
10 budget plus accumulated reserves. The developer shall provide the
11 agency with such proof of the bond or other guarantee as may be
12 necessary at the time of registration and annually thereafter. The
13 bond shall not be released by the agency until all requirements of
14 section 2 of P.L. , c. (C.) (pending before the Legislature
15 as this bill) have been met.

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17 2. Upon the transition of control of the executive board by the
18 developer to the owners pursuant to section 5 of P.L.1993, c.30
19 (C.45:22A-47), the developer shall:

20 a. Cause to be prepared by an engineer chosen by the owners
21 an engineering report on the common elements;

22 b. Provide documentation that all municipal and other required
23 governmental approvals and certifications have been granted for all
24 common elements; and

25 c. Make a full accounting of all association activities during
26 the period of developer control.

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28 3. During the period of developer control of an association, two
29 or more owners, other than the developer, shall be permitted to file
30 warranty claims derivatively on behalf of the association
31 concerning warranties applicable to the common elements of the
32 planned community. As used in this section, “developer” and
33 “association” shall have the meaning as those terms as defined
34 under section 3 of “The Planned Real Estate Development Full
35 Disclosure Act,” P.L.1977, c.419 (C.45:22A-23).

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37 4. This act shall take effect immediately.

40 STATEMENT

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42 This bill is part of a package of bills implementing the
43 recommendations of the State Commission of Investigation in its
44 report of March, 2005 entitled “The Good, the Bad and the Ugly:
45 New-Home Construction in New Jersey.”

46 The bill requires a developer to post a bond with the Department
47 of Community Affairs to secure the completion of the common
48 elements of a planned community and also requires the developer to

1 maintain adequate reserve accounts for maintenance and
2 replacement of the common elements.

3 The bill establishes specific requirements to turn over documents
4 and assets for a developer upon the transition of control of the
5 association board to the owners in the community. The developer at
6 this time must: cause to be prepared by an engineer chosen by the
7 owners an engineering report on the common elements; provide
8 documentation that all municipal and other required governmental
9 approvals and certifications have been granted for all common
10 elements; and make a full accounting of all association activities
11 during the period of developer control. In addition, the bill
12 provides that, during the period of developer control of an
13 association, two or more owners shall be permitted to file warranty
14 claims derivatively on behalf of the association concerning
15 warranties applicable to the common elements of the planned
16 community.