

[First Reprint]

SENATE, No. 2261

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

SYNOPSIS

Revises law relating to common interest communities.

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on May 28, 2020, with amendments.



(Sponsorship Updated As Of: 6/21/2021)

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

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

7
8 1. An additional chapter, chapter 8E, is added to Title 46 of the
9 Revised Statutes as follows:

10
11 TITLE 46
12 CHAPTER 8E
13 ARTICLE 1
14 DEFINITIONS AND GENERAL PROVISIONS
15

16 46:8E-1. Short title.

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

19
20 46:8E-2. Definitions.

21 As used in this chapter:

22 “Allocated interests” means the following interests allocated
23 to each unit:

24 a. in a condominium, the undivided interest in the common
25 elements, the common expense liability, and votes in the
26 association;

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

29 c. in a planned community, the common expense liability and
30 votes in the association.

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

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

36 “Bylaws” means the instruments, however denominated, that
37 contain the procedures for conduct of the affairs of the association
38 regardless of the form in which the association is organized,
39 including any amendments to the instruments.

40 “Common elements” means:

41 a. in the case of:

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

44 (2) a planned community, any real estate within a planned

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCU committee amendments adopted May 28, 2020.

1 community which is owned or leased by the association, other than
2 a unit; and

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

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

8 “Common expenses” means expenditures made by, or financial
9 liabilities of, the association, together with any allocations to
10 reserves.

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

- 14 a. real estate taxes;
15 b. insurance premiums;
16 c. maintenance; or
17 d. improvement of, or services or other expenses related to,
18 common elements, other units, or other real estate described in the
19 declaration.

20 Common interest community includes condominiums,
21 cooperatives, and any other real estate development composed of
22 individually owned property units and common property jointly
23 owned and managed by the unit owners as an association.

24 “Condominium” means a common interest community in which
25 portions of the real estate are designated for separate ownership and
26 the remainder of the real estate is designated for common ownership
27 solely by the owners of those portions. A common interest
28 community is not a condominium unless the undivided interests in
29 the common elements are vested in the unit owners.

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

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

36 “Declarant” means any person or group of persons acting in
37 concert that:

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

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

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

43 “Declaration” means the instrument, however denominated, that
44 creates a common interest community, including any amendments
45 to the instrument.

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

- 48 a. add real estate to a common interest community;

- 1 b. create units, common elements, or limited common elements
- 2 within a common interest community;
- 3 c. subdivide units or convert units into common elements; or
- 4 d. withdraw real estate from a common interest community.
- 5 “Dispose” means a voluntary transfer to a purchaser of any legal
- 6 or equitable interest in a unit, but the term does not include the
- 7 transfer or release of a security interest.
- 8 “Executive board” means the body, regardless of name,
- 9 designated in the declaration or bylaws to act on behalf of the
- 10 association.
- 11 “Identifying number” means a symbol or address that identifies
- 12 only one unit in a common interest community.
- 13 “Leasehold common interest community” means a common
- 14 interest community in which all or a portion of the real estate is
- 15 subject to a lease the expiration or termination of which will
- 16 terminate the common interest community or reduce its size.
- 17 “Limited common element” means a portion of the common
- 18 elements allocated by the declaration or by operation of subsections
- 19 b. or d. of N.J.S.46:8E-15 for the exclusive use of one or more but
- 20 fewer than all of the units.
- 21 “Master association” means an organization described in
- 22 N.J.S.46:8E-33.
- 23 “Offering” means an advertisement, inducement, solicitation, or
- 24 attempt to encourage a person to acquire an interest in a unit, other
- 25 than as security for an obligation. An advertisement in a newspaper
- 26 or other periodical of general circulation, or in a broadcast medium
- 27 to the general public, of a common interest community not located
- 28 in this State, is not an offering under this chapter if the
- 29 advertisement states that it is made in compliance with the law of
- 30 the jurisdiction in which the common interest community is located.
- 31 “Person” means an individual, corporation, business trust, estate,
- 32 trust, partnership, limited liability company, association, joint
- 33 venture, public corporation, government or governmental
- 34 subdivision, agency, or instrumentality, or any other legal or
- 35 commercial entity.
- 36 “Planned community” means a common interest community that
- 37 is not a condominium or a cooperative. A condominium or
- 38 cooperative may be part of a planned community.
- 39 “Proprietary lease” means an agreement with the association
- 40 pursuant to which a member is entitled to exclusive possession of a
- 41 unit in a cooperative.
- 42 “Purchaser” means a person, other than a declarant or a dealer,
- 43 who by means of a voluntary transfer acquires a legal or equitable
- 44 interest in a unit other than:
- 45 a. a leasehold interest, including renewal options, of less than
- 46 20 years; or
- 47 b. as security for an obligation.

1 “Real estate” means any leasehold or other estate or interest in,
2 over, or under land, including structures, fixtures, and other
3 improvements and interests that by custom, usage, or law pass with
4 a conveyance of land though not described in the contract of sale or
5 instrument of conveyance. The term includes parcels with or
6 without upper or lower boundaries and spaces that may be filled
7 with air or water.

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

11 “Residential purposes” means use for dwelling purposes,
12 recreational purposes, or both.

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

17 “Security interest” means an interest in real estate or personal
18 property, created by contract or conveyance, which secures payment
19 or performance of an obligation. The term includes a lien created
20 by a mortgage, deed of trust, trust deed, security deed, contract for
21 deed, land sales contract, lease intended as security, assignment of
22 lease or rents intended as security, pledge of an ownership interest
23 in an association, and any other consensual lien or title retention
24 contract intended as security for an obligation.

25 “Special declarant rights” means rights reserved for the benefit
26 of a declarant to:

27 a. complete improvements indicated on plats and plans filed
28 with the declaration or, in a cooperative, to complete improvements
29 described in the public offering statement;

30 b. exercise any development right;

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

33 d. use easements through the common elements for the purpose
34 of making improvements within the common interest community or
35 within real estate which may be added to the common interest
36 community;

37 e. make the common interest community subject to a master
38 association;

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

41 g. appoint or remove any officer of the association or any
42 master association or any executive board member during any
43 period of declarant control;

44 h. control any construction, design review, or aesthetic
45 standards committee or process;

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

1 j. have access to the records of the association to the same
2 extent as a unit owner.

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

13 “Unit owner” means a declarant or other person that owns a unit,
14 or a lessee of a unit in a leasehold common interest community
15 whose lease expires simultaneously with any lease the expiration or
16 termination of which will remove the unit from the common interest
17 community, but does not include a person having an interest in a
18 unit solely as security for an obligation. In a condominium or
19 planned community, the declarant is the owner of any unit created
20 by the declaration. In a cooperative, the declarant is treated as the
21 owner of any unit to which allocated interests have been allocated
22 until that unit has been conveyed to another person.

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

26

27 46:8E-3. No Variation by Agreement.

28 Except as expressly provided in this chapter, the effect of the
29 provisions of the chapter may not be varied by agreement, and
30 rights conferred by it may not be waived. Except as otherwise
31 provided, a declarant may not act under a power of attorney, or use
32 any other device, to evade the limitations or prohibitions of this
33 chapter, or the declaration.

34

35 46:8E-4. Separate titles and taxation.

36 a. In a condominium or planned community:

37 (1) Each unit that has been created, together with its interest in
38 the common elements, constitutes for all purposes a separate parcel
39 of real estate.

40 (2) Each unit shall be separately taxed and assessed, and no
41 separate tax or assessment may be rendered against common
42 elements for which a declarant has reserved no development rights.

43 b. Any portion of the common elements for which the declarant
44 has reserved a development right shall be separately taxed and
45 assessed against the declarant, and the declarant alone is liable for
46 payment of those taxes.

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

4 ¹d. Any reduction in the real estate tax for common elements or
5 common property assessed by a municipality to an association prior
6 to the effective date of P.L. , c. (C.) (pending before the
7 Legislature as this bill) and included in the budget of an association
8 shall be deducted from the association's budget for the following
9 fiscal year.¹

10
11 46:8E-5. Applicability of local ordinances, regulations and
12 building codes.

13 a. A local unit shall not impose a code requirement upon any
14 structure in a common interest community that differs from a code
15 requirement imposed upon an equivalent structure under a different
16 form of ownership.

17 b. In condominiums and cooperatives, no zoning, subdivision,
18 or other real estate use law, ordinance, or regulation may prohibit
19 the condominium or cooperative form of ownership or impose any
20 requirement upon a condominium or cooperative which it would not
21 impose upon a physically identical development under a different
22 form of ownership.

23 c. Except as provided in subsections a. and b. of this section,
24 the provisions of this chapter shall not invalidate or modify any
25 provision of any building code, zoning, subdivision, or other real
26 estate use law, ordinance, or rule, or regulation governing the use of
27 real estate.

28
29 46:8E-6. Eminent domain.

30 a. If a unit is acquired by eminent domain or part of a unit is
31 acquired by eminent domain leaving the unit owner with a remnant
32 that may not practically or lawfully be used for any purpose
33 permitted by the declaration, the award shall include compensation
34 to the unit owner for that unit and its allocated interests, whether or
35 not any common elements are acquired. Upon acquisition, unless
36 the judgment otherwise provides, that unit's allocated interests shall
37 be reallocated to the remaining units in proportion to the respective
38 allocated interests of those units before the taking, and the
39 association shall promptly prepare, execute, and record an
40 amendment to the declaration reflecting the reallocations. Any
41 remnant of a unit remaining after part of a unit is taken under this
42 subsection shall be a common element.

43 b. Except as provided in subsection a. of this section, if part of
44 a unit is acquired by eminent domain, the award shall compensate
45 the unit owner for the reduction in value of the unit and for the
46 reduction in value of the unit's allocated interests in the common
47 elements, whether or not any common elements are acquired. Upon
48 acquisition, unless the decree otherwise provides: (1) a unit's

1 allocated interests shall be reduced in proportion to the reduction in
2 the size of the unit, or on any other basis specified in the
3 declaration, and (2) the portion of the allocated interests divested
4 from a partially acquired unit shall be automatically reallocated to
5 that unit and to the remaining units in proportion to the respective
6 allocated interests of those units before the taking, with the
7 partially-acquired unit participating in the reallocation on the basis
8 of its reduced allocated interests.

9 c. If part of the common elements is acquired by eminent
10 domain, the portion of the award attributable to the common
11 elements taken shall be paid to the association. Unless the
12 declaration provides otherwise, any portion of the award
13 attributable to the acquisition of a limited common element shall be
14 divided among the owners of the units to which that limited
15 common element was allocated at the time of acquisition in
16 proportion to their rights in the limited common elements.

17 d. The Declaration of Taking or other document evidencing a
18 transfer of title to the condemning authority shall be recorded in
19 every county in which any portion of the common interest
20 community is located.

21
22 46:8E-7. Supplemental general principles of law applicable.

23 The principles of law and equity, including the law of
24 corporations, any other form of organization authorized by the law
25 of this State and unincorporated associations, the law of real estate,
26 and the law relative to capacity to contract, principal and agent,
27 eminent domain, estoppel, fraud, misrepresentation, duress,
28 coercion, mistake, receivership, substantial performance, or other
29 validating or invalidating cause supplement the provisions of this
30 chapter, except to the extent inconsistent with this chapter.

31
32 46:8E-8. Construction against implicit repeal.

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

37
38 46:8E-9. Severability.

39 If any provision of this chapter or the application thereof to any
40 person or circumstance is held invalid, the invalidity shall not affect
41 other provisions or applications of this chapter which can be given
42 effect without the invalid provisions or application, and to this end
43 the provisions of this chapter are severable.

44
45 46:8E-10. Obligation of good faith.

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

1 46:8E-11. Remedies to be liberally administered.

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

5

6 46:8E-12. Relation to Electronic Signatures in Global and
7 National Commerce Act.

8 This chapter shall modify, limit, and supersede the federal
9 "Electronic Signatures in Global and National Commerce Act," 15
10 U.S.C. s.7001, et seq., but do not modify, limit, or supersede
11 s.101(c) of that act, 15 U.S.C. s.7001(c), or authorize electronic
12 delivery of any of the notices described in s.103(b) of that act, 15
13 U.S.C. s.7003(b).

14

15 46:8E-13. Applicability to common interest communities.

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

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

20 c. If a common interest community was validly established
21 before the effective date of this chapter, this chapter shall not
22 require the community to file a declaration.

23 d. This chapter shall not alter the rights and responsibilities of
24 declarants of common interest communities established before the
25 effective date of this chapter.

26 e. "The Planned Real Estate Development Full Disclosure
27 Act," P.L.1977, c.419 (C.45:22A-21 et seq.) shall continue to apply
28 to the respective associations and developers except to the extent
29 that this chapter contains provisions that conflict with that act, in
30 which case the terms of this chapter shall be controlling.

31 f. Unless the reference indicates otherwise, a statutory
32 reference to a condominium, cooperative, or other type of common
33 interest community formed under, or subject to, the "Condominium
34 Act," P.L.1969, c.257 (C.46:8B-1 et seq.), "The Cooperative
35 Recording Act of New Jersey," P.L.1987, c.381 (C.46:8D-1 et al.),
36 the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.),
37 or "The Planned Real Estate Development Full Disclosure Act,"
38 P.L.1977, c.419 (C.45:22A-21 et seq.), shall be construed to include
39 an equivalent type of common interest community, if formed under,
40 or subject to, this chapter.

41

42

ARTICLE 2

43

CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES

44

45

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

47

48

A common interest community may be created pursuant to this

chapter only by a declaration executed in the same manner as a

1 deed. The declaration shall be recorded in every county in which
2 any portion of the common interest community is located and shall
3 be indexed treating the common interest community as the grantee
4 and each person executing the declaration as the grantors.

5
6 46:8E-15. Unit boundaries.

7 If the declaration does not expressly provide for certain unit
8 boundaries or the components of units specified below, then:

9 a. If walls, floors, or ceilings are designated as boundaries of a
10 unit, all lath, furring, wallboard, plasterboard, plaster, paneling,
11 tiles, wallpaper, paint, finished flooring, and any other materials
12 constituting any part of the finished surfaces thereof shall be a part
13 of the unit, and all other portions of the walls, floors, or ceilings
14 shall be a part of the common elements.

15 b. If any chute, flue, duct, wire, conduit, bearing wall, bearing
16 column, or any other fixture lies partially within and partially
17 outside the designated boundaries of a unit, any portion thereof
18 serving only that unit shall be a limited common element allocated
19 solely to that unit, and any portion thereof serving more than one
20 unit or any portion of the common elements shall be a part of the
21 common elements.

22 c. Subject to subsection b. of this section, all spaces, interior
23 partitions, and other fixtures and improvements within the
24 boundaries of a unit and all exterior doors and windows shall be a
25 part of the unit.

26 d. Any shutters, awnings, window boxes, doorsteps, stoops,
27 porches, balconies, patios, and fixtures designed to serve a single
28 unit, but located outside the unit's boundaries, shall be limited
29 common elements allocated exclusively to that unit.

30
31 46:8E-16. Construction and validity of declaration and bylaws.

32 a. All provisions of the declaration and bylaws shall be
33 severable.

34 b. If a conflict exists between the declaration and the bylaws,
35 the declaration shall prevail except to the extent the declaration is
36 inconsistent with this chapter.

37 c. Title to a unit and common elements shall not be rendered
38 unmarketable or otherwise be affected by reason of an insubstantial
39 failure of the declaration to comply with this chapter. Whether a
40 substantial failure impairs marketability is not affected by this
41 chapter.

42
43 46:8E-17. Description of units.

44 A description of a unit which sets forth the name of the common
45 interest community, the recording data for the declaration, and the
46 identifying number of the unit, shall be a legally sufficient

1 description of that unit and all rights, obligations, and interests
2 appurtenant to that unit which were created by the declaration or
3 bylaws.

4

5 46:8E-18. Contents of declaration.

6 a. The declaration shall contain:

7 (1) the names of the common interest community and the
8 association and a statement that the common interest community is
9 either a condominium, cooperative, or planned community;

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

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

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

16 (5) in a condominium or planned community, a description of
17 the boundaries of each unit created by the declaration, including the
18 unit's identifying number or, in a cooperative, a description, which
19 may be by plats or plans, of each unit created by the declaration,
20 including the unit's identifying number, its size or number of
21 rooms, and its location within a building if it is within a building
22 containing more than one unit;

23 (6) a description of any limited common elements, other than
24 those specified in subsections b. and d. of N.J.S.46:8E-15, as
25 provided in paragraph (10) of subsection b. of N.J.S.46:8E-22 and,
26 in a planned community, any real estate that is or shall become
27 common elements;

28 (7) a description of any real estate, except real estate subject to
29 development rights, that may be allocated subsequently as limited
30 common elements, other than limited common elements specified in
31 subsections b. and d. of N.J.S.46:8E-15, together with a statement
32 that they may be so allocated;

33 (8) a description of any development right and other special
34 declarant rights reserved by the declarant, together with a legally
35 sufficient description of the real estate to which each of those rights
36 applies, and a time limit within which each of those rights shall be
37 exercised;

38 (9) if any development right may be exercised with respect to
39 different parcels of real estate at different times, a statement to that
40 effect together with:

41 (a) either a statement fixing the boundaries of those portions and
42 regulating the order in which those portions may be subjected to the
43 exercise of each development right or a statement that no
44 assurances are made in those regards; and

45 (b) a statement as to whether, if any development right is
46 exercised in any portion of the real estate subject to that
47 development right, that development right shall be exercised in all
48 or in any other portion of the remainder of that real estate;

- 1 (10) any other conditions or limitations under which the rights
2 described in paragraph (8) of this subsection may be exercised or
3 lapse;
- 4 (11) an allocation to each unit of the allocated interests in the
5 manner described in N.J.S.46:8E-20;
- 6 (12) any restrictions on alienation of the units, including any
7 restrictions on leasing which exceed the restrictions on leasing units
8 which executive boards may impose and on the amount for which a
9 unit may be sold or on the amount that may be received by a unit
10 owner on sale, condemnation, or casualty loss to the unit or to the
11 common interest community, or on termination of the common
12 interest community;
- 13 (13) the recording data for recorded easements and licenses
14 appurtenant to or included in the common interest community or to
15 which any portion of the common interest community is or may
16 become subject by virtue of a reservation in the declaration;
- 17 (14) any authorization pursuant to which the association may
18 establish and enforce construction and design criteria and aesthetic
19 standards;
- 20 (15) Provisions concerning reserves that:
- 21 (a) mandate that the association create and maintain reserves for
22 the replacement or repair of the common elements, together with a
23 statement of the basis on which those reserves are to be calculated
24 and funded; or
- 25 (b) allow that the association may, but is not required to, create
26 and maintain reserves;
- 27 (16) the bylaws; and
- 28 (17) all matters required by N.J.S.46:8E-19 through -22, and
29 N.J.S.46:8E-28 through -31.
- 30 b. The declaration may contain any other matters the declarant
31 considers appropriate, including any restrictions on the uses of a
32 unit or the number or other qualifications of persons who may
33 occupy units.
- 34
- 35 46:8E-19. Leasehold common interest communities.
- 36 a. Any lease the expiration or termination of which may
37 terminate the common interest community or reduce its size shall be
38 recorded. Every lessor of those leases in a condominium or planned
39 community shall sign the declaration. The declaration shall state:
- 40 (1) the recording data for the lease;
- 41 (2) the date on which the lease is scheduled to expire;
- 42 (3) a legally sufficient description of the real estate subject to
43 the lease;
- 44 (4) any right of the unit owners to redeem the reversion and the
45 manner whereby those rights may be exercised, or a statement that
46 they do not have those rights;

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

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

7 b. After the declaration for a leasehold condominium or
8 leasehold planned community is recorded, neither the lessor nor the
9 lessor's successor in interest may terminate the leasehold interest of
10 a unit owner who makes timely payment of a unit owner's share of
11 the rent and otherwise complies with all covenants which, if
12 violated, would entitle the lessor to terminate the lease. A unit
13 owner's leasehold interest in a condominium or planned community
14 is not affected by failure of any other person to pay rent or fulfill
15 any other covenant.

16 c. Acquisition of the leasehold interest of any unit owner by
17 the owner of the reversion or remainder does not merge the
18 leasehold and fee simple interests unless the leasehold interests of
19 all unit owners subject to that reversion or remainder are acquired.

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

26

27 46:8E-20. Allocation of allocated interests.

28 a. The declaration shall allocate to each unit:

29 (1) in a condominium, a fraction or percentage of undivided
30 interests in the common elements and in the common expenses of
31 the association, and a portion of the votes in the association;

32 (2) in a cooperative, an ownership interest in the association, a
33 fraction or percentage of the common expenses of the association,
34 and a portion of the votes in the association; and

35 (3) in a planned community, a fraction or percentage of the
36 common expenses of the association, and a portion of the votes in
37 the association.

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

41 c. If units shall be added to or withdrawn from the common
42 interest community, the declaration shall state the formulas to be
43 used to reallocate the allocated interests among all units included in
44 the common interest community after the addition or withdrawal.

45 d. The declaration shall provide:

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

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

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

8 e. Except for minor variations due to rounding, the sum of the
9 common expense liabilities and, in a condominium, the sum of the
10 undivided interests in the common elements allocated at any time to
11 all the units shall each equal one if stated as a fraction or 100
12 percent if stated as a percentage. In the event of discrepancy
13 between an allocated interest and the result derived from application
14 of the pertinent formula, the allocated interest prevails.

15 f. In a condominium, the common elements shall not be
16 subject to partition. Any purported conveyance, encumbrance,
17 judicial sale, or other voluntary or involuntary transfer of an
18 undivided interest in the common elements made without the unit to
19 which that interest is allocated shall be void.

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

24

25 46:8E-21. Limited common elements.

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

31 b. Except as the declaration otherwise provides, a limited
32 common element may be reallocated by an amendment to the
33 declaration executed by the unit owners between or among whose
34 units the reallocation is made. The persons executing the
35 amendment shall provide a copy thereof to the association, which
36 shall record it. The amendment shall be recorded in the names of
37 the parties and the common interest community.

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

43

44 46:8E-22. Plats and plans.

45 a. Plats and plans shall be a part of a declaration, and shall be
46 required for all common interest communities except cooperatives.
47 Separate plats and plans are not required by this chapter if all the
48 information required by this section is contained in either a plat or

1 plan. Each plat and plan shall be clear and legible and contain a
2 certification that the plat or plan contains all information required
3 by this section.

4 b. Each plat shall show or project:

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

7 (2) the location and dimensions of all real estate not subject to
8 development rights, or subject only to the development right to
9 withdraw, and the location and dimensions of all existing
10 improvements within that real estate;

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

16 (4) the extent of any encroachments by or upon any portion of
17 the common interest community;

18 (5) to the extent feasible, a legally sufficient description of all
19 easements serving or burdening any portion of the common interest
20 community;

21 (6) except as otherwise provided in subsection h. of this section,
22 the approximate location and dimensions of any vertical unit
23 boundaries not shown or projected on plans recorded pursuant to
24 subsection d. of this section and that unit's identifying number;

25 (7) except as otherwise provided in subsection h. of this section,
26 the approximate location with reference to an established datum of
27 any horizontal unit boundaries not shown or projected on plans
28 recorded pursuant to subsection d. of this section and that unit's
29 identifying number;

30 (8) a legally sufficient description of any real estate in which the
31 unit owners shall own only an estate for years, labeled as leasehold
32 real estate;

33 (9) the distance between non-contiguous parcels of real estate
34 comprising the common interest community;

35 (10) the approximate location and dimensions of any porches,
36 decks, balconies, garages, or patios allocated as limited common
37 elements, and show or contain a narrative description of any other
38 limited common elements; and

39 (11) for real estate not subject to development rights, all other
40 matters customarily shown on land surveys.

41 c. A plat may show the intended location and dimensions of a
42 contemplated improvement that may be constructed within the
43 common interest community. Any contemplated improvement
44 shown shall be labeled either MUST BE BUILT or NEED NOT BE
45 BUILT.

46 d. Except as otherwise provided in subsection h. of this section,
47 to the extent not shown or projected on the plats, plans of the units
48 shall show or project:

- 1 (1) the approximate location and dimensions of the vertical
- 2 boundaries of each unit, and that unit's identifying number;
- 3 (2) the approximate location of any horizontal unit boundaries,
- 4 with reference to an established datum, and that unit's identifying
- 5 number; and
- 6 (3) the approximate location of any units in which the declarant
- 7 has reserved the right to create additional units or common
- 8 elements, identified appropriately.
- 9 e. Unless a horizontal boundary of part of a unit located
- 10 outside a building has the same elevation as the horizontal boundary
- 11 of the inside part of the unit the plats and plans shall depict the
- 12 elevation.
- 13 f. Upon exercising any development right, the declarant shall
- 14 record either new plats and plans necessary to conform to the
- 15 requirements of subsections a., b., and d. of this section, or new
- 16 certifications of plats and plans previously recorded if those plats
- 17 and plans otherwise conform to the requirements of those
- 18 subsections.
- 19 g. A certification of a plat or plan required by this section, or
- 20 N.J.S.46:8E-14, shall be made in accordance with N.J.S.46:26B-1 et
- 21 al. by the person who is legally authorized to practice land
- 22 surveying in this State as provided by P.L.1938, c.342 (C.45:8-27 et
- 23 seq.).
- 24 h. Plats and plans need not show the location and dimensions
- 25 of the units' boundaries or their limited common elements if:
- 26 (1) the plat shows the location and dimensions of all buildings
- 27 containing or comprising the units; and
- 28 (2) the declaration includes other information that shows or
- 29 contains a narrative description of the general layout of the units in
- 30 those buildings and the limited common elements allocated to those
- 31 units.
- 32
- 33 46:8E-23. Exercise of development rights.
- 34 a. To exercise any development right reserved under paragraph
- 35 (8) of subsection a. of N.J.S.46:8E-18, the declarant shall prepare,
- 36 execute, and record an amendment to the declaration pursuant to
- 37 N.J.S.46:8E-30 and in a condominium or planned community
- 38 comply with N.J.S.46:8E-22. The declarant is the unit owner of any
- 39 units thereby created. The amendment to the declaration shall
- 40 assign an identifying number to each new unit created, and, except
- 41 in the case of subdivision or conversion of units described in
- 42 subsection b. of this section, reallocate the allocated interests
- 43 among all units. The amendment shall describe any common
- 44 elements and any limited common elements thereby created and, in
- 45 the case of limited common elements, designate the unit to which
- 46 each is allocated to the extent required by N.J.S.46:8E-21.
- 47 b. Development rights may be reserved within any real estate
- 48 added to the common interest community if the amendment adding

1 that real estate includes all matters required by N.J.S.46:8E-18 or
2 N.J.S.46:8E-19, as the case may be, and, in a condominium or
3 planned community, the plats and plans include all matters required
4 by N.J.S.46:8E-22. This provision does not extend the time limit on
5 the exercise of development rights imposed by the declaration
6 pursuant to paragraph (8) of subsection a. of N.J.S.46:8E-18.

7 c. Whenever a declarant exercises a development right to
8 subdivide or convert a unit previously created into additional units,
9 common elements, or both:

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

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

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

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

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

30
31 46:8E-24. Alterations of units.

32 Subject to the provisions of the declaration and other provisions
33 of law, a unit owner:

34 a. may make any improvements or alterations to the owner's
35 unit that do not impair the structural integrity or mechanical
36 systems or lessen the support of any portion of the common interest
37 community;

38 b. may not change the exterior appearance of a unit, without
39 permission of the association;

40 c. may not change the appearance of the common elements or
41 other portion of the common interest community, without the
42 permission of the association;

43 d. in a planned community or part of a common interest
44 community without adjoining units, where the units were
45 constructed pursuant to a common architectural scheme or design,
46 or contained restrictions in the declaration or bylaws limiting the
47 units to certain colors or design schemes, the exterior appearance of
48 a unit may not be changed without permission of the association;

1 e. after acquiring an adjoining unit or an adjoining part of an
2 adjoining unit, may remove or alter any intervening partition or
3 create apertures therein, even if the partition in whole or in part is a
4 common element, if those acts do not impair the structural integrity
5 or mechanical systems or lessen the support of any portion of the
6 common interest community. Removal of partitions or creation of
7 apertures under this paragraph shall not be an alteration of
8 boundaries.

9
10 46:8E-25. Relocation of unit boundaries.

11 a. Subject to the provisions of the declaration and other
12 provisions of law, the boundaries between adjoining units may be
13 relocated by an amendment to the declaration upon application to
14 the association by the owners of those units. If the owners of the
15 adjoining units have specified a reallocation between their units of
16 their allocated interests, the application shall state the proposed
17 reallocations. Unless the executive board determines, within 30
18 days, that the reallocations are unreasonable, the association shall
19 prepare an amendment that identifies the units involved and states
20 the reallocations. The amendment shall be executed by those unit
21 owners, contain words of conveyance between them, and, on
22 recordation, be indexed in the name of the grantor and the grantee,
23 and in the name of the association.

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

41 c. The association (1) in a condominium or planned community
42 shall prepare and record plats or plans necessary to show the altered
43 boundaries of affected units, and their dimensions and identifying
44 numbers, and (2) in a cooperative shall prepare and record
45 amendments to the declaration, including any plans necessary to
46 show or describe the altered boundaries of affected units, and their
47 dimensions and identifying numbers.

1 46:8E-26. Subdivision of units.

2 a. If the declaration expressly so permits, a unit may be
3 subdivided into two or more units. Subject to the declaration and
4 law other than this chapter, upon application of a unit owner to
5 subdivide a unit, the association shall prepare, execute, and record
6 an amendment to the declaration including, in a condominium or
7 planned community, the plats and plans subdividing that unit.

8 b. The amendment to the declaration shall be executed by the
9 owner of the unit to be subdivided, assign an identifying number to
10 each unit created, and reallocate the allocated interests formerly
11 allocated to the subdivided unit to the new units in any reasonable
12 manner prescribed by the owner of the subdivided unit or on any
13 other basis the declaration requires.

14

15 46:8E-27. Monuments as boundaries.

16 The existing physical boundaries of a unit or the physical
17 boundaries of a unit reconstructed in substantial accordance with
18 the description contained in the original declaration shall be the
19 unit's legal boundaries, rather than the boundaries derived from the
20 description contained in the original declaration, regardless of
21 vertical or lateral movement of the building or minor variance
22 between those boundaries and the boundaries derived from the
23 description contained in the original declaration. This section shall
24 not relieve a unit owner of liability in case of the unit owner's
25 willful misconduct or relieve a declarant or any other person of
26 liability for failure to adhere to any plats and plans or, in a
27 cooperative, to any representation in the public offering statement.

28

29 46:8E-28. Use for sales purposes.

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

45

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

47 a. Subject to the declaration, a declarant shall have an
48 easement through the common elements as may be reasonably

1 necessary for the purpose of discharging the declarant's obligations
2 or exercising special declarant rights, whether arising under this
3 chapter, or reserved in the declaration.

4 b. Subject to the declaration, or provisions of the community
5 association rules or regulations on the use, maintenance, repair,
6 replacement, and modification of common elements the unit owners
7 shall have an easement in the common elements for access to their
8 units.

9 c. Subject to the declaration and rules, the unit owners shall
10 have a right to use the common elements that are not limited
11 common elements and all real estate that shall become common
12 elements for the purposes for which they were intended.

13

14 46:8E-30. Amendment of declaration.

15 a. (1) Subject to the declaration, the declaration, including any
16 plats and plans, may be amended only by vote or agreement of
17 votes representing at least 67 percent of the allocated votes present
18 in person, by proxy, absentee ballot or electronic ballot where the
19 quorum shall not be less than 50 percent of the allocated votes in
20 the association qualified to vote.

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

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

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

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

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

33 b. Notwithstanding any provision of section 4 of P.L.1993, c.30
34 (C.45:22A-46) to the contrary, with respect to any common interest
35 community created after the effective date of this chapter, within 24
36 months following the earlier of the conveyance of title to the last
37 unit in the common interest community or, except where the
38 declaration provides that the common interest community may
39 consist of more than 750 units, 10 years following the sale of the
40 first unit in the common interest community, the executive board
41 shall re-examine the bylaws, declaration and rules of the association
42 and present proposed amendments as the executive board may deem
43 appropriate, as well as amendments proposed by initiative signed by
44 persons eligible to cast at least 20 percent of the votes, for approval
45 by vote of the unit owners. Any proposed amendment shall be
46 unambiguous and consistent with applicable law and with the
47 provisions of the governing documents that are not proposed to be
48 amended. Notwithstanding the terms of a declaration or bylaws, an

1 amendment to an existing bylaw, rule, or declaration, and subject to
2 the limitations expressed in subsection c. of this section, an
3 amendment may be adopted by the lesser of: (1) a majority of the
4 voting interest in the association; or (2) 67 percent of the voting
5 interest actually cast, provided not less than a majority of the
6 eligible votes have been cast. At least 30 days advance notice of
7 any referendum, including the text of any new bylaw or amendment
8 or repeal of an existing provision to be voted on, shall be given to
9 all unit owners by registered or certified mail, by personal delivery,
10 or where the unit owner consents, by electronic communication.

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

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

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

22 (4) Except to the extent expressly permitted or required by other
23 provisions of this chapter, an amendment shall not create or
24 increase special declarant rights, or except as permitted by the
25 declaration increase the number of units or change the boundaries
26 of any unit or the allocated interests of a unit in the absence of
27 unanimous consent of the unit owners.

28 (5) The time limits specified in a declaration within which a
29 declarant's reserved development rights may be exercised, and
30 within which additional development rights may be created, shall be
31 extended only if at least 80 percent of the votes in the association,
32 including 80 percent of the votes allocated to units not owned by
33 the declarant, agree to that action.

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

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

1 purpose or, in the absence of designation, by the president of the
2 association.

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

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

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

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

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

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

39

40 46:8E-31. Termination of common interest community.

41 a. Except for a taking of all the units by eminent domain,
42 foreclosure against an entire cooperative of a security interest that
43 has priority over the declaration, or in the circumstances described
44 in N.J.S.46:8E-37, a common interest community may be
45 terminated, or a portion of the common interest community may be
46 removed from the common interest community, only by agreement
47 of unit owners of units to which at least 80 percent of the votes in
48 the association are allocated, or any larger percentage the

1 declaration specifies, and with any other approvals required by the
2 declaration. The declaration may specify a smaller percentage only
3 if all of the units are restricted exclusively to nonresidential uses.

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

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

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

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

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

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

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

1 termination. Unless the declaration provides that all creditors of the
2 association have that priority:

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

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

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

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

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

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

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

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

46

47 46:8E-32. Rights of secured lenders.

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

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

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

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

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

25 46:8E-33. Master associations.

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

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

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

47 d. The rights and responsibilities of unit owners with respect to
48 the unit owners' association shall apply in the conduct of the affairs

1 of a master association only to persons who elect the board of a
2 master association, whether or not those persons are otherwise unit
3 owners within the meaning of this chapter.

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

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

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

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

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

23

24 46:8E-34. Merger or consolidation of common interest
25 communities.

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

37 b. Subject to the declaration, an agreement of two or more
38 common interest communities to merge or consolidate pursuant to
39 subsection a. of this section shall be evidenced by an agreement
40 prepared, executed, recorded, and certified by the president of the
41 association of each of the pre-existing common interest
42 communities following approval by 67 percent of the allocated
43 votes qualified to vote in each common interest community. The
44 agreement shall be recorded in every county in which a portion of
45 the common interest community is located and shall not be effective
46 until recorded.

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

4 (1) by stating the reallocations or the formulas upon which they
5 are based, or

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

14
15 46:8E-35. Addition of unspecified real estate.

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

29
30 46:8E-36. Master planned communities.

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

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

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

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

- 1 (2) all the information required by paragraphs (3) through (14)
2 of subsection a. of N.J.S.46:8E-18 with respect to that real estate.
- 3 d. Notwithstanding any other provision of this chapter:
- 4 (1) the only real estate in a master planned community which
5 shall be subject to this chapter is that which comprises:
- 6 (a) units that have been declared or which are being offered for
7 sale; and
- 8 (b) real estate described pursuant to subsection c. of this section;
- 9 (2) other real estate that is or may become part of the master
10 planned community shall be subject only to other applicable laws
11 and to any other restrictions and limitations that appear of record;
12 and
- 13 (3) if the public offering statement conspicuously identifies the
14 community as a master planned community, the disclosure
15 requirements shall apply only with respect to units that have been
16 declared or are being offered for sale in connection with the public
17 offering statement and to the real estate described in subsection c.
18 of this section.
- 19 e. Limitations in this chapter on the addition of unspecified
20 real estate shall not apply to a master planned community.
- 21 f. The period of declarant control of the association for a
22 master planned community shall terminate in accordance with
23 conditions specified in the declaration or otherwise at the time the
24 declarant, in a recorded instrument and after giving notice in a
25 record to all the unit owners, voluntarily surrenders all rights to
26 control the activities of the association.
- 27
- 28 46:8E-37. Termination following catastrophe.
- 29 If substantially all the units in a common interest community
30 have been destroyed or are uninhabitable and the available methods
31 for giving notice of a meeting of unit owners to consider
32 termination under N.J.S.46:8E-31 are unlikely to provide adequate
33 notice, the executive board or any other interested person may
34 commence an action seeking to terminate the common interest
35 community. During the pendency of the action, the court may issue
36 whatever orders it considers appropriate, including appointment of a
37 receiver. After a hearing, the court may terminate the common
38 interest community or reduce its size and may issue any other order
39 the court considers to be in the best interest of the unit owners and
40 persons holding an interest in the common interest community.
- 41 The payment of proceeds of any sale or other disposition of the
42 property in a common interest community shall be as follows:
- 43 a. On termination of the common interest community,
44 proceeds, after payment of valid liens, shall be paid to unit owners
45 in proportion to the fair market value immediately before
46 termination of their units including the value of allocated interests
47 and limited common elements;

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

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

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

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

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

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

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

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

38
39 2. The following sections are repealed:

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

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

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

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

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

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

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

3

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

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

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

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

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

29

30 4. This act shall take effect immediately.