

SENATE, No. 3423

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 9, 2021

Sponsored by:
Senator GERALD CARDINALE
District 39 (Bergen and Passaic)

SYNOPSIS

Expands DCA oversight over common interest communities; establishes trust fund, advisory council, and ombudsman office.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning common interest communities and
2 supplementing Title 46 of the Revised Statutes.

3

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

6

7 1. As used in this act:

8 “Advisory council” means the Advisory Council on Common
9 Interest Communities established pursuant to section 3 of P.L. , c.
10 (C.) (pending before the Legislature as this bill).

11 “Association” means the entity responsible for the administration
12 of a common interest community, which entity may be incorporated
13 or unincorporated.

14 “Commissioner” means the Commissioner of Community
15 Affairs.

16 “Common interest community” means real estate described in a
17 declaration with respect to which a person is obligated by virtue of
18 unit ownership to pay for a share of: real estate taxes; insurance
19 premiums; maintenance; or improvement of, or services or other
20 expenses related to, common elements, other units, or other real
21 estate described in the declaration. Common interest community
22 shall include condominiums, cooperatives, and any other real estate
23 development composed of individually owned property units and
24 common property jointly owned and managed by the unit owners as
25 an association.

26 “Department” means the Department of Community Affairs.

27 “Office” means the Office of the Ombudsman for Common
28 Interest Communities established pursuant to section 4 of P.L. ,
29 c. (C.) (pending before the Legislature as this bill).

30 “Ombudsman” means the person appointed as head of the office
31 pursuant to section 4 of P.L. , c. (C.) (pending before the
32 Legislature as this bill).

33 “Trust fund” means the Common Interest Community
34 Homeowners' Association Trust Fund established pursuant to
35 section 5 of P.L. , c. (C.) (pending before the Legislature as
36 this bill).

37

38 2. a. With respect to common interest communities, the
39 department shall have authority to:

40 (1) initiate, receive, hear and review complaints, adopt rules,
41 hold hearings, make findings and impose sanctions with regard to
42 any of the following matters:

43 (a) maintaining and granting access to records required to be
44 maintained by the association and made available to homeowners;

45 (b) through the auspices of the office the comportment of fair
46 elections for association governing board members and officers and
47 the establishment of voting procedures and forms as the

1 commissioner finds necessary, including, but not limited to, ballots,
2 absentee ballots and proxy ballots;
3 (c) establishing and implementing a fair and efficient procedure
4 for the resolution of disputes between associations and
5 homeowners;
6 (d) determining whether a conflict of interest on the part of
7 association trustees, officers and employees exists and whether to
8 impose a sanction;
9 (2) issue subpoenas for the production of documents and the
10 attendance of witnesses with respect to the investigation of any
11 complaint;
12 (3) forward to the appropriate governmental officials any
13 information that may indicate violation of any statute, criminal or
14 otherwise, or any rules of court or professional conduct;
15 (4) render advisory opinions as to whether a given state of facts
16 or circumstances constitutes a violation of any statute or rule
17 applicable to common interest community associations;
18 (5) enforce all statutes and regulations imposing any duty upon
19 common interest community associations;
20 (6) remove from office, after notice and the opportunity for a
21 hearing, any governing board member or officer who shall fail to
22 comply with any order issued by the commissioner to cease and
23 desist from violating any statute, rule, court order or proper vote of
24 the owners. Following any such removal, the department shall
25 provide such assistance as may be required by the association of a
26 common interest community in scheduling and holding elections or
27 in managing the association until such time as the governing board
28 is able to function properly. Notice, which shall include the
29 underlying basis therefore, of any fine imposed upon the association
30 or a board member, or removal of an governing board member or
31 officer by the department shall be provided to all homeowners by
32 the governing board within 30 days of the action and shall be
33 entered upon the minutes of the next meeting of the governing
34 board or of the association;
35 (7) set standards and procedures for dispute resolution at the
36 association level in conjunction with the office in accordance with
37 section 4 of P.L. , c. (C.) (pending before the Legislature as
38 this bill);
39 (8) select, assign and provide trained and impartial volunteer
40 mediators for the purpose of resolving disputes in conjunction with
41 the office in accordance with section 4 of P.L. , c. (C.)
42 (pending before the Legislature as this bill); and
43 (9) promulgate all rules and regulations necessary to effectuate
44 P.L. , c. (C.) (pending before the Legislature as this bill) in
45 accordance with the "Administrative Procedure Act," P.L.1968,
46 c.410 (C.52:14B-1 et seq.).

1 b. (1) If the department determines, after notice, that an
2 officer, governing board member, or property manager of an
3 association has:

4 (a) violated the "Common Interest Community and
5 Homeowners' Association Act," P.L.1969, c.257 (C.46:8B-1 et
6 seq.), "The Planned Real Estate Development Full Disclosure Act,"
7 P.L.1977, c.419 (C.45:22A-21 et seq.), or any other statute or
8 regulation governing homeowners' associations hereinafter enacted;

9 (b) directly or through an agent or employee, knowingly
10 engaged in any violation of the governing documents of the
11 association; or

12 (c) violated any lawful order or rule of the department;
13 then the department may issue an order requiring the person to
14 cease and desist from the unlawful practice or to take such other
15 affirmative action as in the judgment of the department will carry
16 out the purposes of P.L. , c. (C.) (pending before the
17 Legislature as this bill).

18 (2) If the department makes a finding of fact in writing that the
19 public interest will be irreparably harmed by delay in issuing an
20 order, it may issue a temporary cease and desist order. Every
21 temporary cease and desist order shall include in its terms a
22 provision that upon request a hearing shall be held within 10 days
23 of such request to determine whether it becomes permanent. Such
24 temporary cease and desist order shall be forwarded by certified
25 mail.

26 (3) The department shall provide an opportunity for a hearing
27 for any association of a common interest community prior to the
28 imposition of any sanction, including monetary fines. Associations
29 shall be subject to fines only after they have failed or refused to
30 comply with an order of the department. The maximum fine that
31 may be levied against an association for failure to comply with an
32 order to cease and desist from continuing to violate an order of the
33 department shall be the greater of \$2,500 or one percent of the total
34 annual expenditures as listed on the most recently adopted budget,
35 per order. The department may impose a monetary fine on a board
36 member or members, not to exceed \$5,000, if it is determined that
37 the board member or members are solely responsible for the
38 continued failure of the board to comply with an order or orders
39 issued pursuant to this section, and the assessment of a fine against
40 the association would be unfair under the circumstances. In such a
41 case, the offending board member may not use the association
42 attorney, but may obtain private counsel at the member's own
43 expense. Appeal from a department determination pursuant to this
44 section may be made to the Office of Administrative Law.

45 (4) The penalties pursuant to this section may be collected in a
46 summary proceeding pursuant to the "Penalty Enforcement Law of
47 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Jurisdiction to
48 enforce such penalties is hereby conferred upon the courts specified

1 by section 2 of P.L.1999, c.274 (C.2A:58-11). Suit may be brought
2 by the State of New Jersey; payment of a money judgment pursuant
3 hereto shall be remitted to the State Treasurer, for deposit into the
4 trust fund;

5 c. The authority provided to the department pursuant to
6 P.L. c. (C.) (pending before the Legislature as this bill) shall
7 only apply to common interest communities with over 100 units and
8 are intended to supplement, not replace, existing oversight authority
9 provided under the "Common Interest Community and
10 Homeowners' Association Act," P.L.1969, c.257 (C.46:8B-1 et
11 seq.), "The Planned Real Estate Development Full Disclosure Act,"
12 P.L.1977, c.419 (C.45:22A-21 et seq.), or any other statute or
13 regulation governing homeowners' associations.

14

15 3. a. There is established in, but not of, the Department of
16 Community Affairs, the Advisory Council on Common Interest
17 Communities. The council shall consist of nine members appointed
18 by the Governor, and shall include two representatives of the New
19 Jersey Common-Interest Homeowners Coalition, one representative
20 from the League of Women Voters of New Jersey, and one
21 representative of the Center for Government Studies, Rutgers
22 University. The other five members shall be persons who own units
23 in common interest communities, not more than two of whom serve,
24 or have served within the immediately preceding 48 months, on the
25 governing boards of their respective associations. The ombudsman
26 appointed pursuant to section 4 of P.L. , c. (C.) (pending
27 before the Legislature as this bill) shall serve as an ex officio,
28 nonvoting member of the advisory council.

29 Within 60 days of the effective date of P.L. , c. (C.)
30 (pending before the Legislature as this bill), and at least one month
31 prior to the expiration of the term of a member nominated by an
32 organization listed above, that organization shall submit to the
33 Governor three nominees for consideration, from which the
34 Governor may choose. If any organization does not submit three
35 nominees for consideration at any time required, the Governor may
36 appoint a member of the Governor's choice.

37 Members shall be appointed to two-year terms; however, of the
38 five unit owner members first appointed, four shall be appointed
39 initially to a one year term.

40 b. The functions of the advisory council shall be to:

41 (1) receive, from the public and self-initiated, input regarding
42 issues of concern with respect to common interest communities and
43 recommendations for changes in the law concerning common
44 interest communities. The issues that the advisory council shall
45 consider include, but are not limited to, the rights and
46 responsibilities of the unit owners in relation to the rights and
47 responsibilities of the association;

1 (2) review, evaluate, and advise the department concerning
2 revisions and adoption of rules affecting common interest
3 communities; and

4 (3) recommend improvements, if needed, to the education or
5 other current programs impacting common interest communities.
6

7 4. a. There is established in the Department of Community
8 Affairs the Office of the Ombudsman for Common Interest
9 Communities, which, for purposes of separation from activities
10 related to enforcement powers granted to the commissioner over
11 developers, and over owner-controlled governing boards, shall be
12 separate and apart from any other division within the department.

13 b. The office shall be headed by the ombudsman, who shall be
14 appointed by the commissioner and shall not function in the
15 department in any other capacity other than to carry out the
16 purposes of this section. The ombudsman shall be an attorney in
17 good standing admitted to the bar of New Jersey and qualified by
18 experience in the areas of planned real estate developments and
19 alternative dispute resolution procedures. No person who shall
20 have been a unit owner or an employee of, or provider of
21 professional or business services to, any homeowners' association
22 of a common interest community or organization representing
23 homeowners' associations within the preceding 36 month period
24 shall be eligible for appointment as ombudsman. An officer or full-
25 time employee of the office may not actively engage in any other
26 business or profession; serve as the representative of any political
27 party, executive committee, or other governing body of a political
28 party; serve as an executive, officer, or employee of a political
29 party; receive remuneration for activities on behalf of any candidate
30 for public office; or engage in soliciting votes or other activities on
31 behalf of a candidate for public office. The ombudsman or any
32 employee of the office may not become a candidate for election to
33 public office unless the ombudsman or employee first resigns office
34 or employment, as applicable. The office shall be funded from
35 moneys deposited into the trust fund. The ombudsman shall have
36 the powers that are necessary to carry out the duties of the office,
37 including the following specific powers:

38 (1) maintain access to and use of all files and records of the
39 department;

40 (2) employ professional and clerical staff as necessary for the
41 efficient operation of the office;

42 (3) issue reports and recommendations to the department, its
43 divisions, and the advisory council. The ombudsman shall make
44 such recommendations as deemed appropriate for legislation
45 relative to departmental rules, jurisdiction, personnel, and
46 functions;

47 (4) act as liaison between the department, unit owners,
48 governing board members, community association property

1 managers, and other affected parties. The ombudsman shall
2 develop policies and procedures to assist unit owners, governing
3 board members, community association property managers, and
4 other affected parties to understand their rights and responsibilities
5 as set forth in the statutes and the governing documents governing
6 their respective association;

7 (5) coordinate and assist in the preparation and adoption of
8 educational and reference material, and endeavor to coordinate with
9 private or volunteer providers of these services, so that the
10 availability of these resources is made known to the largest possible
11 audience;

12 (6) monitor and review procedures and disputes concerning
13 common interest community elections or meetings, including, but
14 not limited to, recommending that the department pursue
15 enforcement action in any manner where there is reasonable cause
16 to believe that election misconduct has occurred;

17 (7) monitor and mediate claims for "repair and deduct" made
18 pursuant to section 16 of P.L.1969, c.257 (C.46:8B-16);

19 (8) recommend changes to the department for changes in rules
20 and procedures for the filing, investigation, and resolution of
21 complaints filed by unit owners, associations, and managers;

22 (9) provide resources to assist members of governing boards and
23 officers of associations to carry out their powers and duties
24 consistent with the statutes, department rules, and the common
25 interest community governing documents; this activity shall be
26 coordinated with the Center for Government Services, Rutgers
27 University and shall include listings of appropriate reference and
28 educational materials and general budgetary and financial guidance.
29 The ombudsman and the Center for Government Services may make
30 contractual arrangements to provide authorized training and
31 materials with recognized trade organizations currently providing
32 such services to board members;

33 (10) (a) encourage and facilitate voluntary meetings with and
34 between unit owners, governing boards, community association
35 property managers, and other affected parties when the meetings
36 may assist in resolving a dispute within a community association
37 before a person submits a dispute for a formal or administrative
38 remedy. The ombudsman shall act as a neutral resource for both the
39 rights and responsibilities of unit owners, associations, and board
40 members;

41 (b) develop and maintain, in consultation with the Association
42 Regulation Unit in the Department of Community Affairs, a pool
43 and list of volunteers throughout the State who have been trained in
44 dispute resolution and to establish procedures and a system of
45 training for such volunteers;

46 (c) obtain and compile information concerning alternative
47 dispute resolution proceedings throughout the State that may serve
48 as a resource on the methods used to resolve disputes, for the

1 benefit of associations, homeowners and volunteer dispute
2 resolvers;

3 (d) coordinate the selection and agreement by the parties to a
4 mediator and the dates agreed upon for mediation;

5 (e) conduct dispute resolution workshops for governing board
6 members and homeowners;

7 (11) assist associations in their dealings with municipalities and
8 with other State and local regulatory agencies;

9 (12) assist owners of low and moderate income units in
10 inclusionary common interest communities and their governing
11 boards in developing methods to ensure the continued affordability
12 of those units, including grants or loans through the Council on
13 Affordable Housing; and

14 (13) assist homeowners in common interest communities in
15 which there are shared utility bills to pay those bills when the
16 association has fallen into arrears and the continued habitability of
17 the units is at stake. The commissioner may issue an order to a
18 governing board to enter into a payment agreement in such an
19 instance, and may remove a governing board member who fails to
20 comply with such an order.

21
22 5. a. Within 90 days of the effective date of P.L. ,
23 c. (C.) (pending before the Legislature as this bill), and
24 annually on the same date thereafter, all homeowners associations
25 shall register with the commissioner, on such form as the
26 commissioner shall prescribe, and shall pay an annual registration
27 fee, which the commissioner shall establish by rule, which fee shall
28 not exceed the sum of three dollars for each unit to which a vote as
29 a member of the association is allocated within the common interest
30 community in accordance with P.L. , c. (C.) (pending before
31 the Legislature as this bill). This fee shall not be adjusted annually
32 by the commissioner. Associations shall collect the fee on a per
33 voting unit basis and report the fee paid in their financial documents
34 separate from any other assessment or association charges. An
35 association may file a lien on a unit if the owner thereof refuses to
36 pay the registration fee as required by this section, and may also
37 impose fines therefor and avail itself of the procedure outlined in
38 section b. of this section. Associations formed subsequent to the
39 effective date of P.L. , c. (C.) (pending before the
40 Legislature as this bill) shall register within 30 days of the
41 formation of the association; provided, however, that any
42 association required to be registered with the department shall be
43 registered not later than the date of registration of the common
44 interest community. Any association registration fee not paid in
45 full by the date due shall be subject to penalty charges in the
46 amount of one and one half percent per month or portion thereof on
47 the unpaid balance. An association that has not paid in full all
48 outstanding fees, together with any penalty thereon, shall not have

1 the authority, notwithstanding any other law to the contrary, to
2 impose fines, record liens, or restrict privileges until the balance is
3 paid in full, or, in flagrant cases, and upon proper notice and due
4 process allowing for a hearing, may have its officers removed from
5 office or its corporation status voided, pursuant to an order of the
6 commissioner.

7 b. In cases of extreme delinquency in the payment of common
8 expenses of at least 6 months or more, or in the case of delinquency
9 of payment of common fees, late fees, or fines totaling more than
10 \$2,500, an association shall be eligible to apply to the office for
11 formal arbitration to reduce the outstanding charges to a judgment
12 for a writ of attachment against the delinquent owner or owners.
13 Upon a finding by the arbitrator that the outstanding assessments,
14 charges, or fines were properly imposed by an association upon the
15 owner, and are duly owed, and the delinquency is not based on
16 severe financial inability to pay, such as illness or loss of
17 employment, a lien may be recorded on the defaulting owners' unit
18 if not previously filed, and the arbitrator may apply, upon the
19 approval of the ombudsman, for a judgment for a writ of attachment
20 from a court of competent jurisdiction in the name of the
21 association against the personal assets of the owner of the unit. If
22 such a writ is obtained by an arbitrator, the arbitrator may cause a
23 levy to be issued on behalf of the association upon any bank
24 accounts or other known assets of an owner and shall turn over any
25 proceeds obtained to the association to which such amounts are due
26 and owing.

27 c. All registration fees and penalties received by the
28 department pursuant to this section shall be deposited as specified
29 in the paragraphs below in an interest bearing, non-lapsing
30 revolving fund, entitled the "Common Interest Community
31 Homeowners' Association Trust Fund," to be held by the State
32 Treasurer. Moneys held in this non-lapsing revolving fund shall be
33 continuously appropriated to the department for the following
34 purposes and in the proportions specified:

35 (1) those amounts as available from the funds deposited into the
36 fund in accordance with section 6 of P.L. , c. (C.) (pending
37 before the Legislature as this bill), for the purposes of making
38 grants to associations comprised, in part or in whole, of low and
39 moderate income households for assistance to those households in
40 the payment of the common maintenance expenses;

41 (2) those amounts as available from the registration fees
42 collected pursuant to this section as necessary in the discretion of
43 the commissioner for:

44 (a) the Center for Government Services, Rutgers University for
45 the purposes of providing educational training or training materials
46 for board members;

1 (b) the Center for Negotiation and Conflict Resolution, Rutgers
2 University for the purposes of providing conflict resolution training
3 for board members, property managers and owners;

4 (c) the Association Regulation Unit in the Department of
5 Community Affairs, for the purpose of providing arbitration
6 services and for training of volunteer mediators; and

7 (d) the purposes of defraying administrative costs of the
8 department in the enforcement and effectuation of P.L. , c. (C.)
9 (pending before the Legislature as this bill) and P.L.1969, c.257,
10 which shall include funding for the booklet and advisory council
11 expenses, if any, as required by P.L. , c. (C.) (pending
12 before the Legislature as this bill).

13 d. All funds collected shall be dedicated and expended solely
14 for the purposes provided in this section. In the event funds are
15 appropriated or transferred from this fund for any other purpose in
16 contradiction of this section, then the obligation of associations to
17 pay the annual registration fee pursuant to this section shall be
18 suspended until such time as the full amount of the funds
19 transferred or appropriated is reinstated to the fund, and all costs
20 which cannot be paid from the fund due to insufficiencies thereafter
21 shall be paid from the General Fund of the State. Any claims that
22 transfers have been made outside of the purposes of this section
23 may be submitted to the Joint Budget Oversight Committee of the
24 State Legislature, or its successor committee for its review.

25 e. All associations which register shall also file annually
26 thereafter an annual report, which shall include:

27 (1) the names of the current officers or trustees of the governing
28 board, employees names, and salaries and bonuses paid, if any;

29 (2) a copy of the most recent bylaws and rules, if any were
30 changed since the previous report;

31 (3) a copy of the most recent budget adopted and financial
32 statement;

33 (4) the number and nature of complaints and ADR proceedings
34 entered into by the board as a result of the complaints;

35 (5) the amounts and nature of fines imposed; and

36 (6) any information deemed to be pertinent by the
37 commissioner.

38 The report required by this section shall be distributed annually
39 to all of the members of the association by the association. This
40 report may contain a copy of the association's most recent bylaws
41 and rules, but it is not required to contain such information.

42

43 6. The department shall prepare and publish a booklet, which
44 shall be made available at cost to the general public, to associations
45 and to unit owners in common interest communities to serve as a
46 general guide to common interest community associations. The
47 booklet shall be distributed by the association to each unit owner
48 free of charge initially, and at cost as required for distribution to

1 purchasers; it shall be the duty of each selling unit owner to provide
2 a copy of the booklet to a purchaser of the unit at or before the time
3 of signing of the sales contract. The booklet shall include, at a
4 minimum, the following:

5 a. an explanation of the nature of home ownership in a
6 common interest community and a glossary of relevant terms,
7 including, but not limited to, "master declaration," "bylaws,"
8 "master deed," "covenants and restrictions," and "common
9 elements";

10 b. a description of the rights and responsibilities of unit
11 owners, including reference to applicable statutes and rules;

12 c. a description of the duties and powers of, and restrictions on,
13 executive boards, including reference to applicable statutes and
14 rules. The booklet shall include information concerning conflict of
15 interest requirements applicable to executive board members and
16 officers and to professionals hired by associations and shall also
17 include reference to any other sources of information that may be
18 recommended by the commissioner as being of assistance to
19 executive board members and officers in the discharge of their
20 duties and to the public and professional bodies having authority to
21 investigate allegations of statutory or rule violations by board
22 members and officers or by managers, attorneys, accountants, or
23 other professionals;

24 d. a description of the statutory and regulatory requirements for
25 association bylaws or rules and such other material as the
26 commissioner shall deem useful; and

27 e. a listing of documents and other information that a potential
28 purchaser of a unit in a common interest community should obtain
29 before entering into a contract to purchase a unit, including, but not
30 limited to: copies of the association's governing documents; a copy
31 of the latest capital reserve study, if any, showing the condition, life
32 expectancy and replacement costs of major mechanical systems and
33 other common elements; any litigation pending against the
34 association; any pending notices or orders issued by the department
35 or any other governmental entity; the association's procedures for
36 alternate dispute resolution, adopting rules and regulations,
37 providing access to records, approval of budgets, and review of unit
38 owners' applications to do work on their units; delinquency and
39 foreclosure rates; the association's insurance coverages; and
40 governmental and non-governmental remedies available in the event
41 of violation of the rights of unit owners. These documents and this
42 information shall be made available to prospective purchasers upon
43 written request and copies shall be provided, for a charge not
44 exceeding the reasonable cost of copying or printing, to any person
45 who has contracted to purchase a unit within the jurisdiction of the
46 association.

1 7. There shall be set aside from the registration fees collected
2 from developers pursuant to section 7 of P.L.1977, c.419
3 (C.45:22A-27) and the regulations promulgated pursuant thereto, an
4 amount equal to \$10 per lot, parcel, unit or interest, which amount
5 shall be deposited into trust fund for the purposes of making loans
6 to common interest community associations which are formed to
7 manage communities in which are included units restricted to
8 occupancy by low and moderate income households.

9
10 8. This act shall take effect on the first day of the sixth month
11 after enactment, except that the Commissioner of Community
12 Affairs shall immediately take such administrative action as
13 necessary to effectuate the provisions of P.L. , c. (C.) (pending
14 before the Legislature as this bill).

15
16
17 STATEMENT
18

19 This bill enhances the Department of Community Affairs (DCA)
20 regulatory powers over owner-controlled governing boards found
21 within common interest communities; creates an Advisory Council
22 on Common Interest Communities; establishes the Office of
23 Ombudsman for Common Interest Communities; and creates
24 Common Interest Community Homeowners' Association Trust
25 Fund. Additionally this bill requires DCA to prepare and publish
26 and distribute a booklet that serves a general guide to community
27 associations to owners in common interest communities. Lastly, the
28 bill provides funding for grants and loans to homeowner
29 associations maintaining common property in inclusionary common
30 interest communities containing units reserved for low and
31 moderate income families.

32 Under this bill common interest communities would include
33 condominiums, cooperatives, and any other real estate development
34 composed of individually owned property units and common
35 property jointly owned and managed by the unit owners as an
36 association.

37 Under the bill DCA would have the power to initiate, receive,
38 hear and review complaints, adopt rules, hold hearings, make
39 findings and impose sanctions. Additionally, DCA would have the
40 power to issue subpoenas for the production of documents and the
41 attendance of witnesses with respect to the investigation of any
42 complaint; to forward to the appropriate governmental officials any
43 information that may indicate violation of any statute, criminal or
44 otherwise, or any rules of court or professional conduct; to render
45 advisory opinions as to whether a given state of facts or
46 circumstances would constitute a violation of any statute or rule
47 applicable to associations; to enforce all statutes and regulations
48 imposing any duty upon associations; to remove from office, after

1 notice and the opportunity for a hearing, any governing board
2 member or officer who fails to comply with any order issued by the
3 commissioner to cease and desist from violating any statute, rule,
4 court order or proper vote of the owners; to set standards and
5 procedures for dispute resolution at the association level; and to
6 select, assign and provide trained and impartial volunteer mediators
7 for the purpose of resolving disputes in conjunction with the Office
8 of the Ombudsman of Common Interest Communities. These new
9 authorities provided to DCA would only apply to common interest
10 communities with over 100 units.

11 The bill also creates an Advisory Council on Common Interest
12 Communities to assist DCA in formulating and revising its
13 regulations and policies regarding common interest communities.
14 Additionally, the advisory council would recommend improvements
15 to DCA, if needed, in the education or other current programs
16 impacting common interest communities. The advisory council
17 would consist of nine members appointed by the Governor, and
18 would contain representative members for owners, board members,
19 governmental entities and a nonpartisan voting rights group.

20 This bill creates a new entity within DCA, known as the Office
21 of the Ombudsman for Common Interest Communities. This office
22 would assist homeowners in understanding their rights and
23 responsibilities and the remedies available to them, as well as assist
24 governing board members and officers of associations in receiving
25 appropriate training to allow them to properly discharge their
26 functions and duties. Additionally, this office would function as a
27 liaison between associations and any entity concerning disputes
28 regarding code compliance or inspections. The costs associated
29 with the Office of the Ombudsman for Common Interest
30 Communities under the bill would be met by a registration fee
31 required to be paid annually by each unit owner assigned a vote as a
32 member of a common interest community. The fee is not subject to
33 being increased by the commissioner.

34 Under the bill, 90 days after enactment all homeowners
35 associations are required to register with DCA, and pay an annual
36 registration fee. The fee would not exceed three dollars for each
37 unit to which a vote as a member of the association is allocated
38 within the common interest community. This fee would not be
39 adjusted annually by the commissioner. Associations would collect
40 the fee on a per voting unit basis and report the fee paid in their
41 financial documents separate from any other assessment or
42 association charges. All registration fees and penalty moneys
43 received by DCA would be deposited in an interest bearing, non
44 lapsing revolving fund, entitled the "Common Interest Community
45 Homeowners' Association Trust Fund," to be held by the State
46 Treasurer. Moneys held in this non-lapsing revolving fund would
47 be continuously appropriated to DCA for the purposes of making
48 grants to associations comprised, in part or in whole, of low and

1 moderate income households for assistance to those households in
2 the payment of the common maintenance expenses. As well as,
3 used by the Center for Government Services, Rutgers University;
4 for the purposes of providing educational training or training
5 materials for board members; the Center for Negotiation and
6 Conflict Resolution, Rutgers University for the purposes of
7 providing conflict resolution training for board members, property
8 managers and owners; the Association Regulation Unit in DCA for
9 the purpose of providing arbitration services and for training of
10 volunteer mediators; and the purposes of defraying administrative
11 costs of the department for the booklet and Advisory Council
12 expenses, if any.

13 Under the bill, DCA is required to prepare and publish a booklet,
14 which is to be made available at cost to the general public, to
15 associations and to unit owners in common interest communities to
16 serve as a general guide to community associations. The booklet
17 would be distributed by the association to each unit owner free of
18 charge initially, and at cost as required for distribution to
19 purchasers; it will be the duty of each selling unit owner to provide
20 a copy of the booklet to a purchaser of the unit at or before the time
21 of signing of the sales contract.

22 Under the bill, funding for grants and loans to homeowner
23 associations maintaining common property in inclusionary common
24 interest communities containing units reserved for low and
25 moderate income families, would be supported by a set-aside of a
26 portion of the registration fees now charged developers of such
27 communities.