ASSEMBLY, No. 2027

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:
Assemblyman JERRY GREEN
District 22 (Middlesex, Somerset and Union)
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SYNOPSIS
Concerns membership and management of homeowners associations.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.
AN ACT concerning the administration and management of planned real estate developments, and amending and supplementing P.L.1993, c.30.

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

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

1. a. For the purposes of P.L.1993, c.30 (C.45:22A-43 et seq.) and P.L. . c. (C. ) (pending before the Legislature as this bill), the term “owner” and “unit owner” shall mean the owner of any lot, parcel, unit or interest, in a planned real estate development that is, or is intended to be, a separately-owned area thereof.

b. A developer subject to the registration requirements of section 6 of P.L.1977, c.419 (C.45:22A-26), or the entity charged with the management of a planned real estate development as that term is defined pursuant to section 3 of P.L.1977, c.419 (C.45:22A-23), regardless of the date of formation of the association or whether the developer thereof was subject to the registration requirements, shall organize or cause to be organized an association whose obligation it shall be to manage the common elements and facilities. The association, if not formed prior to the effective date of P.L. . c. (C. ) (pending before the Legislature as this bill), shall be formed on or before the filing of the master deed or declaration of covenants and restrictions, and may be formed as a for-profit or nonprofit corporation, unincorporated association, or any other form permitted by law. If the planned real estate development will not be or is not formed as a condominium or a cooperative, the title to the common elements and facilities may be, but are not required to be, placed in the name of the association, provided that the association’s governing documents comport specifically with the provisions of subsection b. of this section, and with all other provisions of P.L. . c. (C. ) (pending before the Legislature as this bill), and P.L.1977, c.419 (C.45:22A-21 et seq.) and P.L.1993, c.30 (C.45:22A-43 et seq.). The fact that the common elements and facilities of a planned real estate development may be titled in the name of the association shall not be construed as diminishing the ownership interests of the unit owners in those common or shared elements and facilities.

c. Membership in the association at all times shall be comprised solely of all of the owners of dwelling units or homes in the planned real estate development, and shall include the developer if there are any unsold units or homes in the development, and the

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.
declaration shall state clearly words to the effect that every owner
of a unit or lot subject to the declaration shall be a member of the
association.

If not stated otherwise in the declaration, the ownership interests
of an individual unit owner in the common elements or facilities
shall be deemed to be in the same proportion as the portion of the
common property maintenance expenses attributed to that unit
owner, provided that the total of all common property interests shall
not be greater than 100%, or one, if determined on a fractional
basis. Any governing documents of an association not in
compliance with this section, as amended by P.L. , c. (C._)
(pending before the Legislature as this bill), shall be deemed
amended to be in compliance.

3. The provisions of P.L.1993, c.30 (C.45:22A-43 et seq.) and
P.L. , c. (C._) (pending before the Legislature as this bill)
shall apply to all associations formed to manage the common
property of planned real estate developments, and shall be
construed broadly to supplement the “Condominium Act,”
P.L.1969, c.257 (C.46:8B-1 et seq.), and shall control over that act
whenever the provisions of that act require less accountability to
owners or less transparency in the actions of associations than
(pending before the Legislature as this bill).

b. The Legislature declares that the provisions of P.L.1993,
c.30 (C.45:22A-43 et seq.) and P.L. , c. (C._) (pending before
the Legislature as this bill) shall be construed as the enabling act for
the formation and operation of associations created to manage the
common elements and facilities of planned real estate
developments, notwithstanding the fact that condominiums shall
also be subject to the provisions of the “Condominium Act,”
P.L.1969, c.457 (C.46:8B-1 et seq.).
(cf: P.L.1993, c.30, s.1)

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

a. (1) The form of administration of an association
organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43)
shall provide for the election of an executive board[ ] or governing
board, elected by and responsible to the members of the association
pursuant to section 4 of P.L.1993, c.30 (C.45:22A-46), which board
shall be comprised of at least three members and through which the
powers of the association shall be exercised and its functions
performed.

(2) Any power granted to, or restriction placed on, a
condominium association or developer pursuant to the
"Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.) shall be
inferred as equally applicable to a homeowners’ association as
defined in section 1 of P.L.1993, c.30 (C.45:22A-43), or developer
thereof, regardless of the lack of specific provisions in P.L.1993, c.30 (C.45:22A-43 et seq.) based on the intent of the Legislature that all types of planned real estate development associations should have uniform powers, standards of operations, and protections for the property interests of homeowners. This shall include, but not be limited to, the power of an association to adopt, amend, and enforce reasonable administrative rules and regulations, including the imposition of fines and late fees which may be enforced as a lien if such powers are contained in the bylaws, and incorporating by reference the authority of sections 14, 15, and 21 of P.L.1969, c.257 (C.46:8B-14, C.46:8B-15, and C.46:8B-21) to a homeowners’ association, relating to the operation, use, and maintenance of the common elements, including limited common elements. The Legislature declares that the rights of owners living in these communities to transparency and fairness in actions from their respective associations, and their elected governing boards, is granted through the provisions of P.L.1993, c.30 (C.45:22A-43 et seq.) and P.L. , c. (C. ) (pending before the Legislature as this bill), and shall not be distinguished or diminished on the basis of the type of planned real estate development that has been formed by the developer.

b. Subject to the master deed, declaration of covenants and restrictions, bylaws or other instruments of creation, [subsection d. of this section] the provisions of P.L.1993, c.30 (C.45:22A-43 et seq.), the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill), and the laws of the State, the executive board may act in all instances on behalf of the association.

c. The members of the executive board appointed by the developer shall be liable as fiduciaries to the owners for their acts or omissions. The members of the executive or governing board elected by the members of the association shall be liable as fiduciaries to the owners for their acts or omissions.

d. (1) During control of the executive board by the developer, copies of the annual audit of association funds shall be available for inspection by owners or their authorized representative at the project site.

(2) An owner shall be entitled to inspect the business and financial records of the association upon written request at reasonable times and a reasonable location, if not on-site. “Business records” means and includes notices, agendas and minutes of meetings, governing documents, including copies of the declaration and bylaws, and governmental orders. “Financial records” means and includes a record of all receipts and expenditures, invoices, cancelled checks, and an account for each unit setting forth any shares of common expenses or other charges due, the due dates thereof, the present balance due, and any interest in common surplus. The financial records of the association shall be kept in accordance with generally accepted accounting
principles. Business and financial records of the association, which
shall be kept separately from the developer’s business and financial
records, shall be deemed presumptively non-confidential for the
purposes of disclosure to members of the association; the executive
board of the association, however, shall redact any clearly personal
identifying information contained in association business or
financial records, such as social security numbers, or personal
addresses, in order to facilitate disclosure to requesting members of
the association. The provisions of this paragraph shall be deemed
applicable to condominiums, notwithstanding the language of
subsection (k) of section 14 of P.L.1969, c.257 (C.46:8B-14), and
shall be construed broadly for the purpose of providing
transparency in the management of common property and facilities,
and the assessment of common expenses.
(cf: P.L.1993, c.30, s.3)

3. Section 4 of P.L. 1993, c.30 (45:22A-46) is amended to read
as follows:
4. The bylaws of the association, which shall initially be
recorded with the master deed shall include, in addition to any other
lawful provisions, the following:
a. A requirement that all meetings of the executive board,
except conference or working sessions at which no binding votes
are to be taken, shall be open to attendance by all unit owners, and
adequate notice of any such meeting shall be given to all unit
owners in such manner as the bylaws shall prescribe; except that the
executive board may exclude or restrict attendance at those
meetings, or portions of meetings, dealing with (1) any matter the
disclosure of which would constitute an unwarranted invasion of
individual privacy; (2) any pending or anticipated litigation or
contract negotiations; (3) any matters falling within the attorney-
client privilege, to the extent that confidentiality is required in order
for the attorney to exercise his ethical duties as a lawyer, or (4) any
matter involving the employment, promotion, discipline or
dismissal of a specific officer or employee of the association. At
each meeting required under this subsection to be open to all unit
owners, the participation of unit owners in the proceedings or the
provision of a public comment session shall be at the discretion of
the executive board, minutes of the proceedings shall be taken, and
copies of those minutes shall be made available to all unit owners
before the next open meeting.
b. The method of calling meetings of unit owners, the
percentage of unit owners or voting rights required to make
decisions and to constitute a quorum. The bylaws may,
nevertheless, provide that unit owners may waive notice of
meetings or may act by written agreement without meetings. If
permitted pursuant to the bylaws, nothing in P.L. , c. (C. )
pending before the Legislature as this bill) shall be deemed to alter
the right of an association to permit tenants to exercise the voting
eight of owners who have contracted to them leasehold interests.

c. The manner of collecting from unit owners their respective
shares of common expenses and the method of distribution to the
unit owners of their respective shares of common surplus or such
other application of common surplus as may be duly authorized by
the bylaws.
d. The method by which the bylaws may be amended, provided
that no amendment shall be effective until recorded in the same
office as the then existing bylaws. If the bylaws fail to provide a
method of amendment, the bylaws may be amended if the
amendment is approved by no less than two-thirds of the members.
No bylaw shall be revised or amended solely by reference to its
title.

The bylaws may also provide a method for the adoption,
amendment and enforcement of reasonable administrative rules and
regulations relating to the operation, use, maintenance and
enjoyment of the units and of the common elements, including
limited common elements.

e. Notwithstanding the provisions of any law to the contrary, a
homeowners’ association shall be deemed to have amended its
governing documents, including its bylaws, upon the effective date
of P.L. , c. (C. ) (pending before the Legislature as this bill)
to provide that:

(1) Any member of the governing board may be recalled and
removed from office, with or without cause, by the vote of, or
agreement in writing by, a majority of all owners in the planned real
estate community, provided that any vote to recall shall be initiated
only upon a petition of at least five percent of all owners. A special
meeting of the association membership to vote for the recall of a
member or members of the governing board shall thereafter be held,
giving notice of the meeting as required for a meeting of members,
and the notice shall state the purpose of the meeting.

(2) Any member of an association shall be permitted to request a
hearing before the State agency charged with the oversight of
planned real estate developments whenever a petition for a recall
vote has been presented to a governing board in accordance with
paragraph (1) of this subsection, and the board has failed to call for
a special meeting of the association within 20 days of the receipt of
the petition. Under such circumstances, the governing board shall
be barred from expending resources to delay the holding of a
special meeting, but shall be permitted to expend such funds as are
necessary to confirm the validity of the petition. Notwithstanding
this paragraph, if there are less than 45 calendar days until the next
scheduled election, the holding of a special meeting shall not be
required.

(cf: P.L.1993, c.30, s.4)
4. (New section) a. All members of a homeowners’ association, which pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43) shall mean all unit owners in a planned real estate development, shall be permitted to be nominated for, run for, and be elected to serve in positions on, the governing or executive board of the association. Elections shall be held at least every year, and shall be conducted with strict adherence to democratic principles and fairness. Other than the initial election required to be held pursuant to section 5 of P.L.1993. c.30 (C.45:22A-47), if an association has not held an election which complies with the provisions of this section prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), then an election shall be held, to be monitored by the State entity charged with administering “The Planned Real Estate Development Full Disclosure Act,” P.L.1977, c.419 (C.45:22A-21 et seq.), in accordance with regulations to be promulgated pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) by that State entity.

b. An association shall conduct elections under the auspices of a committee of unit owners, provided that none of the members of such committee shall be current board members or candidates for the board. The committee shall function independently of the governing board, and may use the services of an independent individual or organization that is qualified in election monitoring services. The committee, independent individual, or organization, as the case may be, shall be responsible for determining the eligibility of unit owners to vote or to run for office, for counting ballots, and for verifying results. No unit owner shall be disqualified from running for office except for reason of nonpayment of assessments. An association shall give all owners at least 60 days advance notice of the election so as to allow all eligible persons who might be interested in filing as candidates a reasonable opportunity to do so. No person shall be disqualified from voting in an election for any reason other than delinquency in the payment of common expense assessments for maintenance, or other special assessments that have not been paid when due and remain unpaid at the time of the election. No person shall be disqualified from voting in an election for common expense assessments of special assessments with a pending due date.

c. All elections shall be conducted in a manner requiring secret ballots to be cast by owners for the election of governing board members, utilizing such safeguards as perforated, pull-off tabs from the ballot sheet, or other devices, to ensure correct counting of the votes cast. Allocating numbers to owners on ballots shall not be permitted. An owner shall be allowed, at his or her option, to cast a ballot by mail, in person, or if the association permits, by electronic ballot. A mailed ballot or an electronic ballot shall be deemed to be a proxy for the purposes of determining a quorum for the meeting at which the election is conducted. All candidates shall be afforded
the opportunity to observe the entire process of counting and tabulation of the ballots, either in person or through a designated representative, and shall have access to lists of persons who are eligible to vote and, after the voting has started, to any list of persons who have voted that the association may maintain. Any challenge to the validity of an election shall be submitted to the governing board and to the agency administering "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.) within 30 days following the date on which written notice of the results of the election is given to members of the association. Pending the outcome of any such challenge, the persons declared to be elected by the committee, individual, or organization responsible for conducting the election shall serve as de facto officers or trustees, as the case may be. Ballots, envelopes, registration records, eligibility lists, proofs of mailing, and other voting materials shall be subject to inspection by all owners at the time of the election and shall be sealed after the election and kept unopened, in the custody of a licensed certified public accountant or the organization that conducted the election, for not less than 30 days following the election, or until such later time as any challenge to the election brought within that 30-day period has been resolved and the documents are no longer required. Voting materials and procedures shall at all times be subject to inspection and review by the agency administering "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.). The parties to any dispute shall be allowed the opportunity to be present or to be represented at any such inspection and review.

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

6. a. The Commissioner of Community Affairs shall cause to be prepared and distributed, for the use and guidance of associations, executive boards and administrators, explanatory materials and guidelines to assist them in achieving proper and timely compliance with the requirements of P.L.1993, c.30 (C.45:22A-43 et al.) and P.L. __, c. __ (C. ____)(pending before the Legislature as this bill). Such guidelines may include the text of model bylaw provisions suggested or recommended for adoption. Failure or refusal of an association or executive board to make proper amendment or supplementation of its bylaws prior to the effective date of P.L.1993, c.30 (C.45:22A-43 et al.) or P.L. __, c. __ (C. ____)(pending before the Legislature as this bill), as applicable, shall not, however, affect their obligation of compliance therewith on and after [that] those effective [date] dates.

b. The Commissioner of Community Affairs shall promulgate any rules and regulations that may be necessary to effectuate the provisions of P.L. __, c. __ (C. ____)(pending before the Legislature as this bill), pursuant to the “Administrative Procedure Act.”
6. This act shall take effect immediately but, except for subsection b. of section 6 of P.L.1993, c.30 (C.45:22A-48) regarding promulgation of rules and regulations, shall remain inoperative until the first day of the fourth month next following enactment.

STATEMENT

This bill makes several modifications to the laws of the State which regulate planned real estate developments and the homeowners’ associations formed to manage the commonly-owned property in such communities. There have been some court decisions indicating a need for the Legislature to clarify and adjust the laws in this area. This bill clarifies the intent of the Legislature that P.L.1993, c.30 (C.45:22A-43 et seq.) be viewed as an enabling act for homeowners’ associations of non-condominium types of planned real estate developments, and it specifies that homeowners’ associations, other than those managing condominium property, may hold title to the common property in the association’s name. The bill prohibits the mere titling of common property in the name of the association to be construed as diminishing the ownership interests of unit owners in the common or shared elements and facilities of a planned community. This is because purchasers in all types of planned communities are sold by the developer as a proportional interest in the common elements upon their purchase of an individual home or dwelling unit, in exchange for restrictive covenants in their individual deeds obligating them to maintain those common elements. The bill requires that the common property ownership interest be proportionately equal to the obligation of each unit owner to pay for the maintenance of the common property, and that the sum of the common property interests in the community is not to exceed 100%, or one if computed fractionally.

In light of the shared ownership interests, the bill requires that the declaration of a planned real estate development state that membership in the homeowners’ association is inherent for a purchaser of a home in such a planned community. The bill provides standards for homeowners’ associations concerning access to records and elections of members to the governing boards of associations. The bill eliminates closed-meeting working sessions of an association’s governing board to reflect the similar law currently applicable to public governing bodies. The bill also
provides a recall procedure which will authorize the removal of elected governing board members. The bill requires the State entity charged with the oversight of the "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.), to assist associations and owners in meeting the provisions of the bill. Currently this oversight is placed within the Department of Community Affairs. The bill also requires the Commissioner of Community Affairs to distribute guidelines on the election procedures and to promulgate, within 60 days or so, any rules or regulations that may be necessary to effectuate the provisions.