

# ASSEMBLY, No. 3163

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 22, 2016

**Sponsored by:**

**Assemblyman BOB ANDRZEJCZAK**  
**District 1 (Atlantic, Cape May and Cumberland)**  
**Assemblyman R. BRUCE LAND**  
**District 1 (Atlantic, Cape May and Cumberland)**

**Co-Sponsored by:**

**Assemblymen S.Kean and Danielsen**

**SYNOPSIS**

Provides fair standards for elections and recall of officers for homeowners' associations.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/31/2017)**

1 AN ACT concerning homeowners' associations and supplementing  
2 P.L.1993, c.30 (C.45:22A-43 et seq.).

3

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

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7 1. An association shall be deemed to have amended its  
8 governing documents upon the effective date of P.L. ,  
9 c. (C. ) (pending before the Legislature as this bill) to provide  
10 that:

11 a. A member of the executive board may be recalled and  
12 removed from office, with or without cause, by the vote of, or  
13 agreement in writing by, a majority of the executive board members  
14 present and eligible to vote at a meeting called for that purpose,  
15 provided that any vote to recall shall be initiated only upon a  
16 petition of at least five percent of all unit owners. A special  
17 meeting of the unit owners to vote for the recall of a member or  
18 members of the executive board may be called by 10 percent of the  
19 members giving notice of the meeting as required for a meeting of  
20 the unit owners, and the notice shall state the purpose of the  
21 meeting.

22 b. The form of administration of the association, which shall  
23 consist of an executive board, is described in the governing  
24 documents, specifying the powers, duties, manner of selection and  
25 removal, and compensation, if any, of the officers, directors, or  
26 trustees of the executive board. Unless otherwise provided in the  
27 bylaws, the executive board shall consist of five members, but if the  
28 number of housing units in the community is less than 11, the  
29 executive board shall consist of no more than three members,  
30 notwithstanding the governing documents. The executive board  
31 shall elect from among its members a president, vice president in  
32 the case of communities with more than 10 units, secretary, and  
33 treasurer, who shall perform the duties of those offices customarily  
34 performed by officers of nonprofit corporations. The executive  
35 board may appoint and designate other officers and assign them  
36 such duties as it deems appropriate.

37

38 2. a. All unit owners shall be permitted to be candidates for  
39 elected positions on the executive board excepted as provided by  
40 subsection b. of this section. Elections shall be held at least every  
41 two years, and shall be conducted with strict adherence to  
42 democratic principles and fairness.

43 b. An association shall conduct elections under the auspices of  
44 a committee of unit owners, none of the members of which shall be  
45 current board members or candidates for the board. The committee  
46 shall function independently of the executive board, and may use  
47 the services of a qualified independent individual or organization  
48 that is qualified in election monitoring services. The committee or

1 independent individual or organization, as the case may be, shall be  
2 responsible for determining the eligibility of unit owners to vote or  
3 to be candidates for membership on the executive board, for  
4 counting ballots, and for verifying results. A unit owner may only  
5 be disqualified from being a candidate for membership on the  
6 executive board for the reason of delinquency in the payment of  
7 assessments. An association shall give all unit owners at least 60  
8 days' advance notice of the election so as to allow all eligible  
9 persons who might be interested in filing as candidates a reasonable  
10 opportunity to do so. A unit owner may only be disqualified from  
11 voting in an election for the reason of delinquency in the payment  
12 of assessments.

13 c. A unit owner shall be allowed to cast a ballot anonymously  
14 for the election of executive board members. A unit owner shall  
15 also be allowed to cast a ballot by mail, in person, or if the  
16 association permits, by electronic ballot. A mailed ballot or an  
17 electronic ballot shall be deemed to be a proxy for purposes of  
18 determining a quorum for the meeting at which the election is  
19 conducted. A non-directed proxy ballot may be counted only in an  
20 election in which there are not as many listed candidates as there  
21 are positions to be filled. All candidates shall be afforded the  
22 opportunity to observe the entire process of counting and tabulation  
23 of the ballots, either in person or through a designated  
24 representative, and shall have access to lists of unit owners who are  
25 eligible to vote and, after the voting has started, to any list of unit  
26 owners who have voted that the association may maintain.

27 d. A challenge to the validity of an election shall be submitted  
28 to the executive board and to the agency administering "The  
29 Planned Real Estate Development Full Disclosure Act," P.L.1977,  
30 c.419 (C.45:22A-21 et seq.) within 30 days following the date on  
31 which written notice of the results of the election is given to  
32 members of the association. Pending the outcome of any such  
33 challenge, the persons declared to be elected by the committee,  
34 individual, or organization responsible for conducting the election  
35 shall serve as de facto officers or trustees, as the case may be.

36 e. Ballots, envelopes, registration records, eligibility lists,  
37 proofs of mailing, and other voting materials shall be subject to  
38 inspection by all unit owners at the time of the election and shall be  
39 sealed after the election and kept unopened, in the custody of a  
40 licensed certified public accountant or the organization that  
41 conducted the election, for not less than 30 days following the  
42 election, or until such later time as any challenge to the election  
43 brought within that 30-day period has been resolved and the  
44 documents are no longer required. Voting materials and procedures  
45 shall at all times be subject to inspection and review by the agency  
46 administering "The Planned Real Estate Development Full  
47 Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.). The

1 parties to any dispute shall be allowed the opportunity to be present  
2 or to be represented at any such inspection and review.

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4 3. This act shall take effect immediately.

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STATEMENT

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9 This bill sets standards for election and recall of executive board  
10 members of homeowners' associations, which are formed to  
11 manage commonly-owned elements in condominiums, cooperatives,  
12 and certain planned communities with common elements. The bill  
13 would limit the size of executive boards of such communities  
14 comprised of less than 11 homes, to three members. The bill would  
15 also provide a default size of five members for the executive board  
16 of all other communities unless the bylaws provide otherwise. The  
17 bill requires that associations permit owners to vote anonymously  
18 for executive board members, and establishes fair election  
19 procedures. Violations of these procedures could be appealed to the  
20 State entity having oversight of planned communities, which  
21 currently is the Department of Community Affairs. The bill also  
22 establishes standard procedures for recall votes of executive board  
23 officers or trustees, and provides that any member of the executive  
24 board may be recalled and removed from office, with or without  
25 cause, by the vote of, or agreement in writing by, a majority of the  
26 executive board members present and eligible to vote at a meeting  
27 called for that purpose, provided that any vote to recall shall be  
28 initiated only upon a petition of at least five percent of all  
29 association members. The bill provides that a special meeting of  
30 the association membership to vote for the recall of a member or  
31 members of the executive board may be called by 10 percent of the  
32 members giving notice of the meeting as required for a meeting of  
33 members.