

[First Reprint]

**ASSEMBLY, No. 3851**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED APRIL 12, 2018

**Sponsored by:**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington)**

**SYNOPSIS**

Revises law relating to common interest communities.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Housing and Community Development Committee on December 5, 2019, with amendments.



1 AN ACT concerning common interest communities, supplementing  
2 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. An additional chapter, chapter 8E, is added to Title 46 of the  
8 Revised Statutes as follows:

9  
10 TITLE 46  
11 CHAPTER 8E  
12 ARTICLE 1  
13 DEFINITIONS AND GENERAL PROVISIONS  
14

15 46:8E-1. Short title.

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

18  
19 46:8E-2. Definitions.

20 As used in this chapter:

21 “Affiliate of a declarant” means any person who controls, is  
22 controlled by, or is under common control with a declarant. For  
23 purposes of this definition:

24 a. a person controls a declarant if the person:

25 (1) is a general partner, officer, director, or employer of the  
26 declarant;

27 (2) directly or indirectly or acting in concert with one or more  
28 other persons, or through one or more subsidiaries, owns, controls,  
29 holds with power to vote, or holds proxies representing, more than  
30 20 percent of the voting interest in the declarant;

31 (3) controls in any manner the election of a majority of the  
32 directors of the declarant; or

33 (4) has contributed more than 20 percent of the capital of the  
34 declarant.

35 b. a person is controlled by a declarant if the declarant:

36 (1) is a general partner, officer, director, or employer of the  
37 person;

38 (2) directly or indirectly or acting in concert with one or more  
39 other persons, or through one or more subsidiaries, owns, controls,  
40 holds with power to vote, or holds proxies representing, more than  
41 20 percent of the voting interest in the person;

42 (3) controls in any manner the election of a majority of the  
43 directors of the person; or

44 (4) has contributed more than 20 percent of the capital of the  
45 person. and

**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:

<sup>1</sup>Assembly AHO committee amendments adopted December 5, 2019.

1 c. control does not exist if the powers described in this  
2 paragraph are held solely as security for an obligation and are not  
3 exercised.

4 “Allocated interests” means the following interests allocated to  
5 each unit:

6 a. in a condominium, the undivided interest in the common  
7 elements, the common expense liability, and votes in the  
8 association;

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

11 c. in a planned community, the common expense liability and  
12 votes in the association.

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

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

18 “Bylaws” means the instruments, however denominated, that  
19 contain the procedures for conduct of the affairs of the association  
20 regardless of the form in which the association is organized,  
21 including any amendments to the instruments.

22 “Common elements” means:

23 a. in the case of:

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

26 (2) a planned community, any real estate within a planned  
27 community which is owned or leased by the association, other than  
28 a unit; and

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

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

34 “Common expenses” means expenditures made by, or financial  
35 liabilities of, the association, together with any allocations to  
36 reserves.

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

40 a. real estate taxes;

41 b. insurance premiums;

42 c. maintenance; or

43 d. improvement of, or services or other expenses related to,  
44 common elements, other units, or other real estate described in the  
45 declaration.

46 Common interest community includes condominiums,  
47 cooperatives, and any other real estate development composed of

1 individually owned property units and common property jointly  
2 owned and managed by the unit owners as an association.

3 “Condominium” means a common interest community in which  
4 portions of the real estate are designated for separate ownership and  
5 the remainder of the real estate is designated for common ownership  
6 solely by the owners of those portions. A common interest  
7 community is not a condominium unless the undivided interests in  
8 the common elements are vested in the unit owners.

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

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

15 “Declarant” means any person or group of persons acting in  
16 concert that:

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

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

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

22 “Declaration” means the instrument, however denominated, that  
23 creates a common interest community, including any amendments  
24 to the instrument.

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

27 a. add real estate to a common interest community;

28 b. create units, common elements, or limited common elements  
29 within a common interest community;

30 c. subdivide units or convert units into common elements; or

31 d. withdraw real estate from a common interest community.

32 “Dispose” means a voluntary transfer to a purchaser of any legal  
33 or equitable interest in a unit, but the term does not include the  
34 transfer or release of a security interest.

35 “Executive board” means the body, regardless of name,  
36 designated in the declaration or bylaws to act on behalf of the  
37 association.

38 “Identifying number” means a symbol or address that identifies  
39 only one unit in a common interest community.

40 “Leasehold common interest community” means a common  
41 interest community in which all or a portion of the real estate is  
42 subject to a lease the expiration or termination of which will  
43 terminate the common interest community or reduce its size.

44 “Limited common element” means a portion of the common  
45 elements allocated by the declaration or by operation of subsections  
46 b. or d. of N.J.S.46:8E-15 for the exclusive use of one or more but  
47 fewer than all of the units.

1       “Master association” means an organization described in  
2 N.J.S.46:8E-33.

3       “Offering” means an advertisement, inducement, solicitation, or  
4 attempt to encourage a person to acquire an interest in a unit, other  
5 than as security for an obligation. An advertisement in a newspaper  
6 or other periodical of general circulation, or in a broadcast medium  
7 to the general public, of a common interest community not located  
8 in this State, is not an offering under this chapter if the  
9 advertisement states that it is made in compliance with the law of  
10 the jurisdiction in which the common interest community is located.

11       “Person” means an individual, corporation, business trust, estate,  
12 trust, partnership, limited liability company, association, joint  
13 venture, public corporation, government or governmental  
14 subdivision, agency, or instrumentality, or any other legal or  
15 commercial entity.

16       “Planned community” means a common interest community that  
17 is not a condominium or a cooperative. A condominium or  
18 cooperative may be part of a planned community.

19       “Proprietary lease” means an agreement with the association  
20 pursuant to which a member is entitled to exclusive possession of a  
21 unit in a cooperative.

22       “Purchaser” means a person, other than a declarant or a dealer,  
23 who by means of a voluntary transfer acquires a legal or equitable  
24 interest in a unit other than:

25       a. a leasehold interest, including renewal options, of less than  
26 20 years; or

27       b. as security for an obligation.

28       “Real estate” means any leasehold or other estate or interest in,  
29 over, or under land, including structures, fixtures, and other  
30 improvements and interests that by custom, usage, or law pass with  
31 a conveyance of land though not described in the contract of sale or  
32 instrument of conveyance. The term includes parcels with or  
33 without upper or lower boundaries and spaces that may be filled  
34 with air or water.

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

38       “Residential purposes” means use for dwelling purposes,  
39 recreational purposes, or both.

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

44       “Security interest” means an interest in real estate or personal  
45 property, created by contract or conveyance, which secures payment  
46 or performance of an obligation. The term includes a lien created  
47 by a mortgage, deed of trust, trust deed, security deed, contract for  
48 deed, land sales contract, lease intended as security, assignment of

1 lease or rents intended as security, pledge of an ownership interest  
2 in an association, and any other consensual lien or title retention  
3 contract intended as security for an obligation.

4 “Special declarant rights” means rights reserved for the benefit  
5 of a declarant to:

6 a. complete improvements indicated on plats and plans filed  
7 with the declaration or, in a cooperative, to complete improvements  
8 described in the public offering statement;

9 b. exercise any development right;

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

12 d. use easements through the common elements for the purpose  
13 of making improvements within the common interest community or  
14 within real estate which may be added to the common interest  
15 community;

16 e. make the common interest community subject to a master  
17 association;

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

20 g. appoint or remove any officer of the association or any  
21 master association or any executive board member during any  
22 period of declarant control;

23 h. control any construction, design review, or aesthetic  
24 standards committee or process;

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

27 j. have access to the records of the association to the same  
28 extent as a unit owner.

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

39 “Unit owner” means a declarant or other person that owns a unit,  
40 or a lessee of a unit in a leasehold common interest community  
41 whose lease expires simultaneously with any lease the expiration or  
42 termination of which will remove the unit from the common interest  
43 community, but does not include a person having an interest in a  
44 unit solely as security for an obligation. In a condominium or  
45 planned community, the declarant is the owner of any unit created  
46 by the declaration. In a cooperative, the declarant is treated as the  
47 owner of any unit to which allocated interests have been allocated  
48 until that unit has been conveyed to another person.

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

4  
5 46:8E-3. No Variation by Agreement.

6 Except as expressly provided in this chapter, the effect of the  
7 provisions of the chapter may not be varied by agreement, and  
8 rights conferred by it may not be waived. Except as otherwise  
9 provided, a declarant may not act under a power of attorney, or use  
10 any other device, to evade the limitations or prohibitions of this  
11 chapter, or the declaration.

12  
13 46:8E-4. Separate titles and taxation.

14 a. In a condominium or planned community:

15 (1) If there is a unit owner other than a declarant, each unit that  
16 has been created, together with its interest in the common elements,  
17 constitutes for all purposes a separate parcel of real estate.

18 (2) If there is a unit owner other than a declarant, each unit shall  
19 be separately taxed and assessed, and no separate tax or assessment  
20 may be rendered against common elements for which a declarant  
21 has reserved no development rights.

22 b. Any portion of the common elements for which the declarant  
23 has reserved a development right shall be separately taxed and  
24 assessed against the declarant, and the declarant alone is liable for  
25 payment of those taxes.

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

29  
30 46:8E-5. Applicability of local ordinances, regulations and  
31 building codes.

32 a. A local unit shall not impose a code requirement upon any  
33 structure in a common interest community that differs from a code  
34 requirement imposed upon an equivalent structure under a different  
35 form of ownership.

36 b. In condominiums and cooperatives, no zoning, subdivision,  
37 or other real estate use law, ordinance, or regulation may prohibit  
38 the condominium or cooperative form of ownership or impose any  
39 requirement upon a condominium or cooperative which it would not  
40 impose upon a physically identical development under a different  
41 form of ownership.

42 c. Except as provided in subsections a. and b. of this section,  
43 the provisions of this chapter shall not invalidate or modify any  
44 provision of any building code, zoning, subdivision, or other real  
45 estate use law, ordinance, or rule, or regulation governing the use of  
46 real estate.

47  
48 46:8E-6. Eminent domain.

1       a. If a unit is acquired by eminent domain or part of a unit is  
2 acquired by eminent domain leaving the unit owner with a remnant  
3 that may not practically or lawfully be used for any purpose  
4 permitted by the declaration, the award shall include compensation  
5 to the unit owner for that unit and its allocated interests, whether or  
6 not any common elements are acquired. Upon acquisition, unless  
7 the judgment otherwise provides, that unit's allocated interests shall  
8 be reallocated to the remaining units in proportion to the respective  
9 allocated interests of those units before the taking, and the  
10 association shall promptly prepare, execute, and record an  
11 amendment to the declaration reflecting the reallocations. Any  
12 remnant of a unit remaining after part of a unit is taken under this  
13 subsection shall be a common element.

14       b. Except as provided in subsection a. of this section, if part of  
15 a unit is acquired by eminent domain, the award shall compensate  
16 the unit owner for the reduction in value of the unit and for the  
17 reduction in value of the unit's allocated interests in the common  
18 elements, whether or not any common elements are acquired. Upon  
19 acquisition, unless the decree otherwise provides: (1) a unit's  
20 allocated interests shall be reduced in proportion to the reduction in  
21 the size of the unit, or on any other basis specified in the  
22 declaration, and (2) the portion of the allocated interests divested  
23 from a partially acquired unit shall be automatically reallocated to  
24 that unit and to the remaining units in proportion to the respective  
25 allocated interests of those units before the taking, with the  
26 partially-acquired unit participating in the reallocation on the basis  
27 of its reduced allocated interests.

28       c. If part of the common elements is acquired by eminent  
29 domain, the portion of the award attributable to the common  
30 elements taken shall be paid to the association. Unless the  
31 declaration provides otherwise, any portion of the award  
32 attributable to the acquisition of a limited common element shall be  
33 divided among the owners of the units to which that limited  
34 common element was allocated at the time of acquisition in  
35 proportion to their rights in the limited common elements.

36       d. The Declaration of Taking or other document evidencing a  
37 transfer of title to the condemning authority shall be recorded in  
38 every county in which any portion of the common interest  
39 community is located.

40

41       46:8E-7. Supplemental general principles of law applicable.

42       The principles of law and equity, including the law of  
43 corporations, any other form of organization authorized by the law  
44 of this State and unincorporated associations, the law of real estate,  
45 and the law relative to capacity to contract, principal and agent,  
46 eminent domain, estoppel, fraud, misrepresentation, duress,  
47 coercion, mistake, receivership, substantial performance, or other

1 validating or invalidating cause supplement the provisions of this  
2 chapter, except to the extent inconsistent with this chapter.

3  
4 46:8E-8. Construction against implicit repeal.

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

9  
10 46:8E-9. Severability.

11 If any provision of this chapter or the application thereof to any  
12 person or circumstance is held invalid, the invalidity shall not affect  
13 other provisions or applications of this chapter which can be given  
14 effect without the invalid provisions or application, and to this end  
15 the provisions of this chapter are severable.

16  
17 46:8E-10. Obligation of good faith.

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

20  
21 46:8E-11. Remedies to be liberally administered.

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

25  
26 46:8E-12. Relation to Electronic Signatures in Global and  
27 National Commerce Act.

28 This chapter shall modify, limit, and supersede the federal  
29 "Electronic Signatures in Global and National Commerce Act," 15  
30 U.S.C. s.7001, et seq., but do not modify, limit, or supersede  
31 s.101(c) of that act, 15 U.S.C. s.7001(c), or authorize electronic  
32 delivery of any of the notices described in s.103(b) of that act, 15  
33 U.S.C. s.7003(b).

34  
35 46:8E-13. Applicability to common interest communities.

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

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

40 c. If a common interest community was validly established  
41 before the effective date, chapter 8E of this Title shall not require  
42 the community to file a declaration.

43 d. This chapter shall not alter the rights and responsibilities of  
44 declarants of common interest communities established before the  
45 effective date of this chapter.

46 e. The "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et  
47 seq.), "The Cooperative Recording Act of New Jersey," P.L.1987,  
48 c.381 (C.46:8D-1 et al.), and "The Planned Real Estate

1 Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21  
2 et seq.) shall continue to apply to the respective associations and  
3 developers except to the extent that this chapter contains provisions  
4 that conflict with any of those acts, in which case the terms of this  
5 chapter shall be controlling.

6  
7 ARTICLE 2

8 CREATION, ALTERATION, AND TERMINATION OF  
9 COMMON INTEREST COMMUNITIES  
10

11 46:8E-14. Creation of common interest communities.

12 A common interest community may be created pursuant to this  
13 chapter only by a declaration executed in the same manner as a  
14 deed. The declaration shall be recorded in every county in which  
15 any portion of the common interest community is located and shall  
16 be indexed treating the common interest community as the grantee  
17 and the each person executing the declaration as the grantors.

18  
19 46:8E-15. Unit boundaries.

20 Except as provided by the declaration:

21 a. If walls, floors, or ceilings are designated as boundaries of a  
22 unit, all lath, furring, wallboard, plasterboard, plaster, paneling,  
23 tiles, wallpaper, paint, finished flooring, and any other materials  
24 constituting any part of the finished surfaces thereof shall be a part  
25 of the unit, and all other portions of the walls, floors, or ceilings  
26 shall be a part of the common elements.

27 b. If any chute, flue, duct, wire, conduit, bearing wall, bearing  
28 column, or any other fixture lies partially within and partially  
29 outside the designated boundaries of a unit, any portion thereof  
30 serving only that unit shall be a limited common element allocated  
31 solely to that unit, and any portion thereof serving more than one  
32 unit or any portion of the common elements shall be a part of the  
33 common elements.

34 c. Subject to subsection b. of this section, all spaces, interior  
35 partitions, and other fixtures and improvements within the  
36 boundaries of a unit shall be a part of the unit.

37 d. Any shutters, awnings, window boxes, doorsteps, stoops,  
38 porches, balconies, patios, and all exterior doors and windows or  
39 other fixtures designed to serve a single unit, but located outside the  
40 unit's boundaries, shall be limited common elements allocated  
41 exclusively to that unit.

42  
43 46:8E-16. Construction and validity of declaration and bylaws.

44 a. All provisions of the declaration and bylaws shall be  
45 severable.

46 b. Limitations on restraints on alienation shall only defeat  
47 provisions of the declaration restricting sales or leasing of units if

1 they violate the "Law Against Discrimination," P.L.1945, c.169  
2 (C.10:5-1 et seq.).

3 c. If a conflict exists between the declaration and the bylaws,  
4 the declaration shall prevail except to the extent the declaration is  
5 inconsistent with this chapter.

6 d. Title to a unit and common elements shall not be rendered  
7 unmarketable or otherwise be affected by reason of an insubstantial  
8 failure of the declaration to comply with this chapter. Whether a  
9 substantial failure impairs marketability is not affected by this  
10 chapter.

11

12 46:8E-17. Description of units.

13 A description of a unit which sets forth the name of the common  
14 interest community, the recording data for the declaration, and the  
15 identifying number of the unit, shall be a legally sufficient  
16 description of that unit and all rights, obligations, and interests  
17 appurtenant to that unit which were created by the declaration or  
18 bylaws.

19

20 46:8E-18. Contents of declaration.

21 a. The declaration shall contain:

22 (1) the names of the common interest community and the  
23 association and a statement that the common interest community is  
24 either a condominium, cooperative, or planned community;

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

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

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

31 (5) in a condominium or planned community, a description of  
32 the boundaries of each unit created by the declaration, including the  
33 unit's identifying number or, in a cooperative, a description, which  
34 may be by plats or plans, of each unit created by the declaration,  
35 including the unit's identifying number, its size or number of  
36 rooms, and its location within a building if it is within a building  
37 containing more than one unit;

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

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

- 1 (8) a description of any development right and other special  
2 declarant rights reserved by the declarant, together with a legally  
3 sufficient description of the real estate to which each of those rights  
4 applies, and a time limit within which each of those rights shall be  
5 exercised;
- 6 (9) if any development right may be exercised with respect to  
7 different parcels of real estate at different times, a statement to that  
8 effect together with:
- 9 (a) either a statement fixing the boundaries of those portions and  
10 regulating the order in which those portions may be subjected to the  
11 exercise of each development right or a statement that no  
12 assurances are made in those regards; and
- 13 (b) a statement as to whether, if any development right is  
14 exercised in any portion of the real estate subject to that  
15 development right, that development right shall be exercised in all  
16 or in any other portion of the remainder of that real estate;
- 17 (10) any other conditions or limitations under which the rights  
18 described in paragraph (8) of this subsection may be exercised or  
19 lapse;
- 20 (11) an allocation to each unit of the allocated interests in the  
21 manner described in N.J.S.46:8E-20;
- 22 (12) any restrictions on alienation of the units, including any  
23 restrictions on leasing which exceed the restrictions on leasing units  
24 which executive boards may impose and on the amount for which a  
25 unit may be sold or on the amount that may be received by a unit  
26 owner on sale, condemnation, or casualty loss to the unit or to the  
27 common interest community, or on termination of the common  
28 interest community;
- 29 (13) the recording data for recorded easements and licenses  
30 appurtenant to or included in the common interest community or to  
31 which any portion of the common interest community is or may  
32 become subject by virtue of a reservation in the declaration;
- 33 (14) any authorization pursuant to which the association may  
34 establish and enforce construction and design criteria and aesthetic  
35 standards;
- 36 (15) Provisions concerning reserves that:
- 37 (a) mandate that the association create and maintain reserves for  
38 the replacement or repair of the common elements, together with a  
39 statement of the basis on which those reserves are to be calculated  
40 and funded; or
- 41 (b) allow that the association may, but is not required to, create  
42 and maintain reserves;
- 43 (16) the bylaws; and
- 44 (17) all matters required by N.J.S.46:8E-19 through -22, and  
45 N.J.S.46:8E-28 through -31.
- 46 b. The declaration may contain any other matters the declarant  
47 considers appropriate, including any restrictions on the uses of a

1 unit or the number or other qualifications of persons who may  
2 occupy units.

3

4 46:8E-19. Leasehold common interest communities.

5 a. Any lease the expiration or termination of which may  
6 terminate the common interest community or reduce its size shall be  
7 recorded. Every lessor of those leases in a condominium or planned  
8 community shall sign the declaration. The declaration shall state:

9 (1) the recording data for the lease;

10 (2) the date on which the lease is scheduled to expire;

11 (3) a legally sufficient description of the real estate subject to  
12 the lease;

13 (4) any right of the unit owners to redeem the reversion and the  
14 manner whereby those rights may be exercised, or a statement that  
15 they do not have those rights;

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

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

22 b. After the declaration for a leasehold condominium or  
23 leasehold planned community is recorded, neither the lessor nor the  
24 lessor's successor in interest may terminate the leasehold interest of  
25 a unit owner who makes timely payment of a unit owner's share of  
26 the rent and otherwise complies with all covenants which, if  
27 violated, would entitle the lessor to terminate the lease. A unit  
28 owner's leasehold interest in a condominium or planned community  
29 is not affected by failure of any other person to pay rent or fulfill  
30 any other covenant.

31 c. Acquisition of the leasehold interest of any unit owner by  
32 the owner of the reversion or remainder does not merge the  
33 leasehold and fee simple interests unless the leasehold interests of  
34 all unit owners subject to that reversion or remainder are acquired.

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

41

42 46:8E-20. Allocation of allocated interests.

43 a. The declaration shall allocate to each unit:

44 (1) in a condominium, a fraction or percentage of undivided  
45 interests in the common elements and in the common expenses of  
46 the association, and a portion of the votes in the association;

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

4 (3) in a planned community, a fraction or percentage of the  
5 common expenses of the association, and a portion of the votes in  
6 the association.

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

10 c. If units shall be added to or withdrawn from the common  
11 interest community, the declaration shall state the formulas to be  
12 used to reallocate the allocated interests among all units included in  
13 the common interest community after the addition or withdrawal.

14 d. The declaration may provide:

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

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

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

24 e. Except for minor variations due to rounding, the sum of the  
25 common expense liabilities and, in a condominium, the sum of the  
26 undivided interests in the common elements allocated at any time to  
27 all the units shall each equal one if stated as a fraction or 100  
28 percent if stated as a percentage. In the event of discrepancy  
29 between an allocated interest and the result derived from application  
30 of the pertinent formula, the allocated interest prevails.

31 f. In a condominium, the common elements shall not be  
32 subject to partition. Any purported conveyance, encumbrance,  
33 judicial sale, or other voluntary or involuntary transfer of an  
34 undivided interest in the common elements made without the unit to  
35 which that interest is allocated shall be void.

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

40  
41 46:8E-21. Limited common elements.

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

47 b. Except as the declaration otherwise provides, a limited  
48 common element may be reallocated by an amendment to the

1 declaration executed by the unit owners between or among whose  
2 units the reallocation is made. The persons executing the  
3 amendment shall provide a copy thereof to the association, which  
4 shall record it. The amendment shall be recorded in the names of  
5 the parties and the common interest community.

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

11  
12 46:8E-22. Plats and plans.

13 a. Plats and plans shall be a part of a declaration, and shall be  
14 required for all common interest communities except cooperatives.  
15 Separate plats and plans are not required by this chapter if all the  
16 information required by this section is contained in either a plat or  
17 plan. Each plat and plan shall be clear and legible and contain a  
18 certification that the plat or plan contains all information required  
19 by this section.

20 b. Each plat shall show or project:

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

23 (2) the location and dimensions of all real estate not subject to  
24 development rights, or subject only to the development right to  
25 withdraw, and the location and dimensions of all existing  
26 improvements within that real estate;

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

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

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

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

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

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

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

3 (10) the approximate location and dimensions of any porches,  
4 decks, balconies, garages, or patios allocated as limited common  
5 elements, and show or contain a narrative description of any other  
6 limited common elements; and

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

9 c. A plat may show the intended location and dimensions of a  
10 contemplated improvement that may be constructed within the  
11 common interest community. Any contemplated improvement  
12 shown shall be labeled either MUST BE BUILT or NEED NOT BE  
13 BUILT.

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

17 (1) the approximate location and dimensions of the vertical  
18 boundaries of each unit, and that unit's identifying number;

19 (2) the approximate location of any horizontal unit boundaries,  
20 with reference to an established datum, and that unit's identifying  
21 number; and

22 (3) the approximate location of any units in which the declarant  
23 has reserved the right to create additional units or common  
24 elements, identified appropriately.

25 e. Unless a horizontal boundary of part of a unit located  
26 outside a building has the same elevation as the horizontal boundary  
27 of the inside part of the unit the plats and plans shall depict the  
28 elevation.

29 f. Upon exercising any development right, the declarant shall  
30 record either new plats and plans necessary to conform to the  
31 requirements of subsections a., b., and d. of this section, or new  
32 certifications of plats and plans previously recorded if those plats  
33 and plans otherwise conform to the requirements of those  
34 subsections.

35 g. A certification of a plat or plan required by this section, or  
36 <sup>1</sup> [subsection b. of] <sup>1</sup> N.J.S.46:8E-14, shall be made in accordance  
37 with N.J.S.46:26B-1 et al. by <sup>1</sup> the <sup>1</sup> person who is legally authorized  
38 to practice land surveying in this State as provided by P.L.1938,  
39 c.342 (C.45:8-27 et seq.).

40 h. Plats and plans need not show the location and dimensions  
41 of the units' boundaries or their limited common elements if:

42 (1) the plat shows the location and dimensions of all buildings  
43 containing or comprising the units; and

44 (2) the declaration includes other information that shows or  
45 contains a narrative description of the general layout of the units in  
46 those buildings and the limited common elements allocated to those  
47 units.

1       46:8E-23. Exercise of development rights.

2       a. To exercise any development right reserved under paragraph  
3 (8) of subsection a. of N.J.S.46:8E-18, the declarant shall prepare,  
4 execute, and record an amendment to the declaration pursuant to  
5 N.J.S.46:8E-30 and in a condominium or planned community  
6 comply with N.J.S.46:8E-22. The declarant is the unit owner of any  
7 units thereby created. The amendment to the declaration shall  
8 assign an identifying number to each new unit created, and, except  
9 in the case of subdivision or conversion of units described in  
10 subsection b. of this section, reallocate the allocated interests  
11 among all units. The amendment shall describe any common  
12 elements and any limited common elements thereby created and, in  
13 the case of limited common elements, designate the unit to which  
14 each is allocated to the extent required by N.J.S.46:8E-21.

15       b. Development rights may be reserved within any real estate  
16 added to the common interest community if the amendment adding  
17 that real estate includes all matters required by N.J.S.46:8E-18 or  
18 N.J.S.46:8E-19, as the case may be, and, in a condominium or  
19 planned community, the plats and plans include all matters required  
20 by N.J.S.46:8E-22. This provision does not extend the time limit on  
21 the exercise of development rights imposed by the declaration  
22 pursuant to paragraph (8) of subsection a. of N.J.S.46:8E-18.

23       c. Whenever a declarant exercises a development right to  
24 subdivide or convert a unit previously created into additional units,  
25 common elements, or both:

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

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

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

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

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

46

47       46:8E-24. Alterations of units.

1 Subject to the provisions of the declaration and other provisions  
2 of law, a unit owner:

- 3 a. may make any improvements or alterations to the owner's  
4 unit that do not impair the structural integrity or mechanical  
5 systems or lessen the support of any portion of the common interest  
6 community;
- 7 b. may not change the appearance of the common elements, or  
8 the exterior appearance of a unit or any other portion of the  
9 common interest community, without permission of the association;
- 10 c. after acquiring an adjoining unit or an adjoining part of an  
11 adjoining unit, may remove or alter any intervening partition or  
12 create apertures therein, even if the partition in whole or in part is a  
13 common element, if those acts do not impair the structural integrity  
14 or mechanical systems or lessen the support of any portion of the  
15 common interest community. Removal of partitions or creation of  
16 apertures under this paragraph shall not be an alteration of  
17 boundaries.

18

19 46:8E-25. Relocation of unit boundaries.

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

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

1 name of the unit owner and the association as grantor or grantee, as  
2 appropriate.

3 c. The association (1) in a condominium or planned community  
4 shall prepare and record plats or plans necessary to show the altered  
5 boundaries of affected units, and their dimensions and identifying  
6 numbers, and (2) in a cooperative shall prepare and record  
7 amendments to the declaration, including any plans necessary to  
8 show or describe the altered boundaries of affected units, and their  
9 dimensions and identifying numbers.

10

11 46:8E-26. Subdivision of units.

12 a. If the declaration expressly so permits, a unit may be  
13 subdivided into two or more units. Subject to the declaration and  
14 law other than this chapter, upon application of a unit owner to  
15 subdivide a unit, the association shall prepare, execute, and record  
16 an amendment to the declaration including, in a condominium or  
17 planned community, the plats and plans subdividing that unit.

18 b. The amendment to the declaration shall be executed by the  
19 owner of the unit to be subdivided, assign an identifying number to  
20 each unit created, and reallocate the allocated interests formerly  
21 allocated to the subdivided unit to the new units in any reasonable  
22 manner prescribed by the owner of the subdivided unit or on any  
23 other basis the declaration requires.

24

25 46:8E-27. Monuments as boundaries.

26 The existing physical boundaries of a unit or the physical  
27 boundaries of a unit reconstructed in substantial accordance with  
28 the description contained in the original declaration shall be the  
29 unit's legal boundaries, rather than the boundaries derived from the  
30 description contained in the original declaration, regardless of  
31 vertical or lateral movement of the building or minor variance  
32 between those boundaries and the boundaries derived from the  
33 description contained in the original declaration. This section shall  
34 not relieve a unit owner of liability in case of the unit owner's  
35 willful misconduct or relieve a declarant or any other person of  
36 liability for failure to adhere to any plats and plans or, in a  
37 cooperative, to any representation in the public offering statement.

38

39 46:8E-28. Use for sales purposes.

40 A declarant may maintain sales offices, management offices, and  
41 models in units or on common elements in the common interest  
42 community only if the declaration so provides and specifies the  
43 rights of the declarant with regard to the number, size, location, and  
44 relocation thereof. In a cooperative or condominium, any sales  
45 office, management office, or model not designated a unit by the  
46 declaration shall be a common element. If a declarant ceases to be  
47 a unit owner, then the declarant ceases to have any rights with  
48 regard to the offices and models unless the declarant promptly

1 removes them from the common interest community in accordance  
2 with a right to remove reserved in the declaration. Subject to any  
3 limitations in the declaration, a declarant may maintain signs on the  
4 common elements advertising the common interest community.  
5 This section is subject to the provisions of other State law and to  
6 local ordinances.

7  
8 46:8E-29. Easement and use rights.

9 a. Subject to the declaration, a declarant shall have an  
10 easement through the common elements as may be reasonably  
11 necessary for the purpose of discharging the declarant's obligations  
12 or exercising special declarant rights, whether arising under this  
13 chapter, or reserved in the declaration.

14 b. Subject to community association regulation on the use,  
15 maintenance, repair, replacement, and modification of common  
16 elements the unit owners shall have an easement in the common  
17 elements for access to their units.

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

22  
23 46:8E-30. Amendment of declaration.

24 a. (1) The declaration, including any plats and plans, may be  
25 amended only by vote or agreement of unit owners of units  
26 representing at least 67 percent of a quorum of the members, which  
27 quorum shall not be less than 50 percent of the membership in the  
28 association qualified to vote.

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

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

33 (b) the association under N.J.S.46:8E-6, subsection d. of  
34 N.J.S.46:8E-19, subsection <sup>1</sup>[d.] c.<sup>1</sup> of N.J.S.46:8E-21, subsection  
35 a. of N.J.S.46:8E-25, or N.J.S.46:8E-26;

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

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

41 b. Notwithstanding any provision of section 4 of P.L.1993, c.30  
42 (C.45:22A-46) to the contrary, within 24 months following  
43 assumption by the owners of control of the executive board, the  
44 executive board shall re-examine the bylaws, declaration and rules  
45 of the association and present proposed amendments as the  
46 executive board may deem appropriate, as well as amendments  
47 proposed by initiative signed by persons eligible to cast at least 20  
48 percent of the votes, for approval by vote of the unit owners. Any

1 proposed amendment shall be unambiguous and consistent with  
2 applicable law and with the provisions of the governing documents  
3 that are not proposed to be amended. Notwithstanding the terms of  
4 a declaration or bylaws, an amendment to an existing bylaw, rule,  
5 or declaration, and subject to the limitations expressed in subsection  
6 c. of this section, an amendment may be adopted by the lesser of:  
7 (1) a majority of votes that are entitled to be cast by all unit owners;  
8 or (2) 67 percent of the votes actually cast, provided not less than a  
9 majority of the eligible votes have been cast. At least 30 days  
10 advance notice of any referendum, including the text of any new  
11 bylaw or amendment or repeal of an existing provision to be voted  
12 on, shall be given to all unit owners by registered or certified mail,  
13 by personal delivery, or where the unit owner consents, by  
14 electronic communication.

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

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

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

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

31 (5) The time limits specified in a declaration within which a  
32 declarant's reserved development rights may be exercised, and  
33 within which additional development rights may be created, shall be  
34 extended only if at least 80 percent of the votes in the association,  
35 including 80 percent of the votes allocated to units not owned by  
36 the declarant, agree to that action. A vote authorizing an extension  
37 of the time limits shall be effective 30 days after the date of  
38 recording an amendment to the declaration memorializing the vote,  
39 unless all the persons holding the affected special declarant rights  
40 or security interest in those rights:

41 (a) record a written objection within that 30-day period, in  
42 which case the amendment shall be void; or

43 (b) consent in writing at the time the amendment is recorded, in  
44 which case the amendment shall be effective when recorded.

45 d. An action to challenge the validity of an amendment adopted  
46 by an association pursuant to this section, other than an action by a  
47 governmental official or entity authorized to do so by statute or

1 regulation adopted pursuant to statute, shall not be brought more  
2 than one year after the amendment is recorded.

3 e. An amendment to a declaration shall be recorded in every  
4 county in which any portion of the common interest community is  
5 located and shall be effective only upon recordation. An  
6 amendment, except an amendment pursuant to subsection a. of  
7 N.J.S.46:8E-25, shall be indexed in the name of the common  
8 interest community and the association as grantees and in the name  
9 of the parties executing the amendment as grantors. Amendments  
10 to the declaration required to be recorded by the association shall be  
11 prepared, executed, recorded, and certified on behalf of the  
12 association by any officer of the association designated for that  
13 purpose or, in the absence of designation, by the president of the  
14 association.

15 f. 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), requires the consent of  
18 a person holding a security interest in a unit as a condition to the  
19 effectiveness of an amendment to the declaration, that consent shall  
20 be granted if no written refusal to consent is received by the  
21 association within 60 days after the association delivers notice of  
22 the proposed amendment to the holder of the security interest or  
23 mails the notice to the holder of the security interest by certified  
24 mail, return receipt requested. The association may rely on the last-  
25 recorded security interest of record in delivering or mailing notice  
26 to the holder of that interest.

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

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

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

38 (c) notice of the proposed amendment is delivered to the unit  
39 owners holding the votes in the association that have not voted or  
40 agreed to the proposed amendment and no written objection to the  
41 proposed amendment is received by the association within 30 days  
42 after the association delivers notice; or

43 (2) Unit owners of units to which at least 80 percent of the votes  
44 in the association are allocated vote for or agree to the proposed  
45 amendment, but at least one unit owner objects to the proposed  
46 amendment and, pursuant to an action brought by the association in  
47 the Superior Court against all objecting unit owners, the court finds  
48 that the objecting unit owners do not have a unique minority

1 interest, different in kind from the interests of the unit owners, that  
2 the voting requirement of the declaration is intended to protect.

3  
4 46:8E-31. Termination of common interest community.

5 a. Except for a taking of all the units by eminent domain,  
6 foreclosure against an entire cooperative of a security interest that  
7 has priority over the declaration, or in the circumstances described  
8 in N.J.S.46:8E-37, a common interest community may be  
9 terminated only by agreement of unit owners of units to which at  
10 least 80 percent of the votes in the association are allocated, or any  
11 larger percentage the declaration specifies, and with any other  
12 approvals required by the declaration. The declaration may specify  
13 a smaller percentage only if all of the units are restricted  
14 exclusively to nonresidential uses.

15 b. An agreement to terminate shall be evidenced by the  
16 execution of a termination agreement, or ratifications of the  
17 agreement, in the same manner as a deed, by the requisite number  
18 of unit owners. A termination agreement and all ratifications of it  
19 shall be recorded in every county in which a portion of the common  
20 interest community is situated and shall be effective only upon  
21 recordation.

22 c. Except as provided in subsection d. of this section, a  
23 termination agreement shall provide that all of the common  
24 elements and units of the common interest community shall be sold  
25 following termination and shall set forth the minimum terms of the  
26 sale.

27 d. If a unit meets zoning and planning requirements as an  
28 independent parcel of real estate at the time of termination, a  
29 termination agreement shall provide that the owner may retain  
30 ownership of that unit.

31 e. An association, on behalf of the unit owners, may contract  
32 for the sale of real estate in a common interest community, but the  
33 contract shall not be binding on the unit owners until approved  
34 pursuant to subsection a. of this section. Upon termination, the  
35 assets of the association, title to real estate and proceeds shall vest  
36 in the association as trustee for the holders of all interests in the  
37 units. Until a sale has been concluded and the proceeds distributed,  
38 the association shall continue in existence with all powers it had  
39 before termination.

40 f. On termination of the common interest community,  
41 proceeds, after payment of valid liens, shall be paid to unit owners  
42 in proportion to the fair market value immediately before  
43 termination of their units including the value of allocated interests  
44 and limited common elements.

45 g. Following termination of a condominium or planned  
46 community, creditors of the association holding liens on the units,  
47 which were docketed before termination, may enforce those liens in  
48 the same manner as any lien holder. Any other creditor of the

1 association shall be treated as if the creditor had perfected a lien on  
2 the units immediately before termination.

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

13 (1) the lien of each creditor of the association which was  
14 perfected against the association before termination shall become,  
15 upon termination, a lien against each unit owner's interest in the  
16 unit as of the date the lien was perfected;

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

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

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

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

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

34 i. In a condominium or planned community, except as  
35 otherwise provided in paragraph (l) of subsection h. of this section,  
36 foreclosure or enforcement of a lien or encumbrance against the  
37 entire common interest community shall not terminate, of itself, the  
38 common interest community, and foreclosure or enforcement of a  
39 lien or encumbrance against a portion of the common interest  
40 community, other than withdrawable real estate, shall not withdraw  
41 that portion from the common interest community. Foreclosure or  
42 enforcement of a lien or encumbrance against withdrawable real  
43 estate, or against common elements that have been subjected to a  
44 security interest by the association, shall not withdraw, of itself,  
45 that real estate from the common interest community, but the person  
46 taking title thereto may require from the association, upon request,  
47 an amendment excluding the real estate from the common interest  
48 community.

1       j. In a condominium or planned community, if a lien or  
2       encumbrance against a portion of the real estate comprising the  
3       common interest community has priority over the declaration and  
4       the lien or encumbrance has not been partially released, the parties  
5       foreclosing the lien or encumbrance, upon foreclosure, may record  
6       an instrument excluding the real estate subject to that lien or  
7       encumbrance from the common interest community.

8  
9       46:8E-32. Rights of secured lenders.

10      a. The declaration may require that all or a specified number or  
11      percentage of the lenders who hold security interests encumbering  
12      units, or who have extended credit to the association, approve  
13      specified actions of the unit owners or the association as a condition  
14      to the effectiveness of those actions, but no requirement for  
15      approval may operate to:

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

18      (2) prevent the association or the executive board from  
19      commencing, intervening in, or settling any litigation or  
20      proceeding, or

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

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

33  
34      46:8E-33. Master associations.

35      a. If the declaration provides that any of the powers of the unit  
36      owners association, also referred to as the association under this  
37      chapter, are to be exercised by or may be delegated to a profit or  
38      nonprofit corporation that exercises those or other powers on behalf  
39      of one or more common interest communities or for the benefit of  
40      the unit owners of one or more common interest communities, all  
41      provisions of this chapter applicable to unit owners' associations  
42      shall apply to any such corporation or unincorporated association,  
43      except as modified by this section.

44      b. Unless it is acting in the capacity of an unit owners  
45      association, a master association may exercise powers over budgets  
46      and finances only to the extent expressly permitted in the  
47      declarations of the common interest communities that are part of the  
48      master association or expressly described in the delegations of

1 power from those common interest communities to the master  
2 association.

3 c. If the declaration of any common interest community  
4 provides that the executive board may delegate certain powers to a  
5 master association, the members of the executive board shall not be  
6 liable for the acts or omissions of the master association with  
7 respect to those powers following delegation.

8 d. The rights and responsibilities of unit owners with respect to  
9 the unit owners' association shall apply in the conduct of the affairs  
10 of a master association only to persons who elect the board of a  
11 master association, whether or not those persons are otherwise unit  
12 owners within the meaning of this chapter.

13 e. Even if a master association is also a unit owners  
14 association, the certificate of incorporation or other instrument  
15 creating the master association and the declaration of each common  
16 interest community, the powers of which are assigned by the  
17 declaration or delegated to the master association, may provide that  
18 the executive board of the master association shall be elected after  
19 the period of declarant control in any of the following ways:

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

23 (2) All members of the executive boards of all common interest  
24 communities subject to the master association may elect all  
25 members of the master association's executive board.

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

29 (4) All members of the executive board of each common interest  
30 community subject to the master association may elect specified  
31 members of the master association's executive board.

32

33 46:8E-34. Merger or consolidation of common interest  
34 communities.

35 a. Any two or more common interest communities of the same  
36 form of ownership, by agreement of the unit owners as provided in  
37 subsection b. of this section, may be merged or consolidated into a  
38 single common interest community. In the event of a merger or  
39 consolidation, unless the agreement otherwise provides, the  
40 resultant common interest community shall be the legal successor,  
41 for all purposes, of the pre-existing common interest communities,  
42 and the operations and activities of the associations of the pre-  
43 existing common interest communities shall be merged or  
44 consolidated into a single association that holds all powers, rights,  
45 obligations, assets, and liabilities of all pre-existing associations.

46 b. An agreement of two or more common interest communities  
47 to merge or consolidate pursuant to subsection a. of this section  
48 shall be evidenced by an agreement prepared, executed, recorded,

1 and certified by the president of the association of each of the pre-  
2 existing common interest communities following approval by  
3 owners of units to which are allocated the percentage of votes in  
4 each common interest community required to terminate that  
5 common interest community. The agreement shall be recorded in  
6 every county in which a portion of the common interest community  
7 is located and shall not be effective until recorded.

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

11 (1) by stating the reallocations or the formulas upon which they  
12 are based, or

13 (2) by stating the percentage of overall allocated interests of the  
14 new common interest community which are allocated to all of the  
15 units comprising each of the pre-existing common interest  
16 communities, and providing that the portion of the percentages  
17 allocated to each unit formerly comprising a part of the pre-existing  
18 common interest community shall be equal to the percentages of  
19 allocated interests allocated to that unit by the declaration of the  
20 pre-existing common interest community.

21  
22 46:8E-35. Addition of unspecified real estate.

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

36  
37 46:8E-36. Master planned communities.

38 a. The declaration for a common interest community may state  
39 that it is a master planned community if the declarant has reserved  
40 the development right to create at least 300 units that may be used  
41 for residential purposes and has obtained preliminary site plan or  
42 subdivision approval permitting the declarant to construct at least  
43 300 residential units pursuant to the "Municipal Land Use Law,"  
44 P.L.1975, c.291 (C.40:55D-1 et seq.).

45 b. If the requirements of subsection a. of this section are  
46 satisfied, the declaration for the master planned community need  
47 not state a maximum number of units and need not contain any of  
48 the information required by paragraphs (3) through (14) of

1 subsection a. of N.J.S.46:8E-18 until the declaration is amended  
2 under subsection c. of this section.

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

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

8 (2) all the information required by paragraphs (3) through (14)  
9 of subsection a. of N.J.S.46:8E-18 with respect to that real estate.

10 d. Notwithstanding any other provision of this chapter:

11 (1) the only real estate in a master planned community which  
12 shall be subject to this chapter is that which comprises:

13 (a) units that have been declared or which are being offered for  
14 sale; and

15 (b) real estate described pursuant to subsection c. of this section;

16 (2) other real estate that is or may become part of the master  
17 planned community shall be subject only to other applicable laws  
18 and to any other restrictions and limitations that appear of record;  
19 and

20 (3) if the public offering statement conspicuously identifies the  
21 community as a master planned community, the disclosure  
22 requirements shall apply only with respect to units that have been  
23 declared or are being offered for sale in connection with the public  
24 offering statement and to the real estate described in subsection c.  
25 of this section.

26 e. Limitations in this chapter on the addition of unspecified  
27 real estate shall not apply to a master planned community.

28 f. The period of declarant control of the association for a  
29 master planned community shall terminate in accordance with  
30 conditions specified in the declaration or otherwise at the time the  
31 declarant, in a recorded instrument and after giving notice in a  
32 record to all the unit owners, voluntarily surrenders all rights to  
33 control the activities of the association.

34

35 46:8E-37. Termination following catastrophe.

36 If substantially all the units in a common interest community  
37 have been destroyed or are uninhabitable and the available methods  
38 for giving notice of a meeting of unit owners to consider  
39 termination under N.J.S.46:8E-31 are unlikely to provide adequate  
40 notice, the executive board or any other interested person may  
41 commence an action seeking to terminate the common interest  
42 community. During the pendency of the action, the court may issue  
43 whatever orders it considers appropriate, including appointment of a  
44 receiver. After a hearing, the court may terminate the common  
45 interest community or reduce its size and may issue any other order  
46 the court considers to be in the best interest of the unit owners and  
47 persons holding an interest in the common interest community.

1       <sup>1</sup>The payment of proceeds of any sale or other disposition of the  
2 property in a common interest community shall be as follows:

3       a. On termination of the common interest community,  
4 proceeds, after payment of valid liens, shall be paid to unit owners  
5 in proportion to the fair market value immediately before  
6 termination of their units including the value of allocated interests  
7 and limited common elements;

8       b. Following termination of a condominium or planned  
9 community, creditors of the association holding liens on the units,  
10 which were docketed before termination, may enforce those liens in  
11 the same manner as any lien holder. Any other creditor of the  
12 association shall be treated as if the creditor had perfected a lien on  
13 the units immediately before termination;

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

24       (1) the lien of each creditor of the association which was  
25 perfected against the association before termination shall become,  
26 upon termination, a lien against each unit owner's interest in the  
27 unit as of the date the lien was perfected;

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

31       (3) the amount of the lien of an association's creditor described  
32 in paragraphs (1) and (2) against each of the unit owners' interest  
33 shall be proportionate to the ratio which each unit's common  
34 expense liability bears to the common expense liability of all of the  
35 units;

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

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

42       (6) creditors of the association shall not be entitled to payment  
43 from a unit owner in excess of the amount of the creditor's lien  
44 against that unit owner's interest.<sup>1</sup>

45  
46       2. This act shall take effect immediately.