

[Second Reprint]

SENATE, No. 3661

STATE OF NEW JERSEY
218th LEGISLATURE

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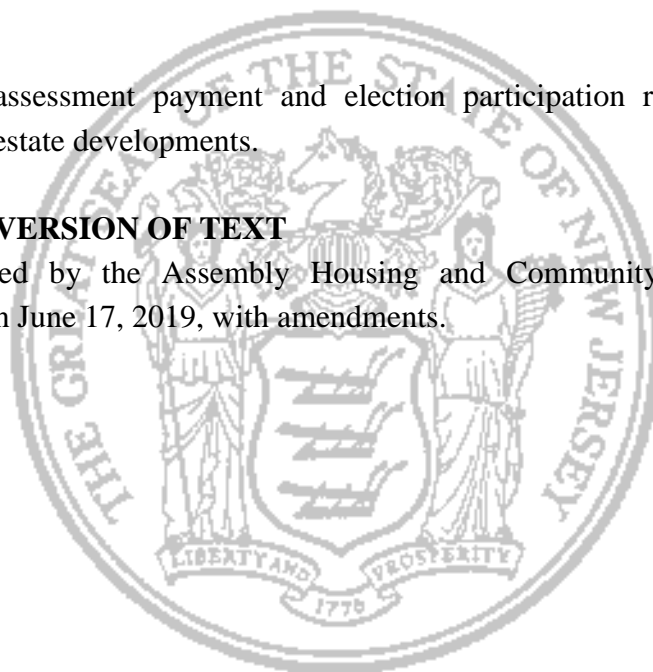
Assemblymen DePhillips, Space and Auth

SYNOPSIS

Clarifies assessment payment and election participation requirements in planned real estate developments.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Community Development Committee on June 17, 2019, with amendments.



(Sponsorship Updated As Of: 6/21/2019)

1 AN ACT concerning assessment payment and election participation
2 in planned real estate developments, ¹supplementing P.L.1977,
3 c.419 (C.45:22A-21 et seq.),¹ and amending various parts of the
4 statutory law.

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

8
9 ¹1. (New section) The Legislature finds and declares that:

10 a. The associations of certain planned real estate developments
11 in the State have recently interpreted that certain property owners
12 are responsible for the payment of assessments and other charges to
13 their associations even when the owners were not aware of the
14 potential charges when deciding to purchase their homes;

15 b. Certain associations have further interpreted that the
16 provisions of P.L.2017, c.106 (C.45:22A-45.1 et al.), enacted on
17 July 13, 2017, may impose new responsibilities on certain property
18 owners to pay assessments and other charges to their associations;
19 and

20 c. It is necessary and in the public interest for the Legislature
21 to:

22 (1) clarify that P.L.2017, c.106 (C.45:22A-45.1 et al.) did not
23 impose new responsibilities on property owners to pay compulsory
24 charges; and

25 (2) protect property owners from the issuance of sudden,
26 unanticipated compulsory charges in planned real estate
27 developments where assessments have historically been voluntary.¹
28

29 ¹**[1.]** ²2.¹ Section 3 of P.L.1977, c.419 (C.45:22A-23) is
30 amended to read as follows:

31 3. As used in this act unless the context clearly indicates
32 otherwise:

33 a. "Disposition" means any sales, contract, lease, assignment,
34 or other transaction concerning a planned real estate development.

35 b. "Developer" or "subdivider" means any person who disposes
36 or offers to dispose of any lot, parcel, unit, or interest in a planned
37 real estate development.

38 c. "Offer" means any inducement, solicitation, advertisement,
39 or attempt to encourage a person to acquire a unit, parcel, lot, or
40 interest in a planned real estate development.

41 d. "Purchaser" or "owner" means any person or persons who
42 acquires a legal or equitable interest in a unit, lot, or parcel in a
43 planned real estate development, and shall be deemed to include a
44 prospective purchaser or owner. However, as used in P.L.1993,

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate floor amendments adopted May 30, 2019.

²Assembly AHO committee amendments adopted June 17, 2019.

1 c.30 (C.45:22A-43 et seq.), "owner" means any person owning a
 2 unit, or an "owner" or holder of a "proprietary lease," as those terms
 3 are defined under subsections i. and k. of section 3 of "The
 4 Cooperative Recording Act of New Jersey," P.L.1987, c.381
 5 (C.46:8D-3), if the development is a cooperative. ²["This definition
 6 shall not require an association to offer election participation or
 7 voting rights for a person with non-payer status, or allow an
 8 association to impose responsibilities on a person with non-payer
 9 status to pay]² ¹["assessments or other charges] ²["compulsory
 10 charges¹.]²

11 e. "State" means the State of New Jersey.

12 f. "Commissioner" means the Commissioner of Community
 13 Affairs.

14 g. "Person" shall be defined as in R.S.1:1-2.

15 h. "Planned real estate development" or "development" means
 16 any real property situated within the State, whether contiguous or
 17 not, which consists of or will consist of, separately owned areas,
 18 irrespective of form, be it lots, parcels, units, or interest, and which
 19 are offered or disposed of pursuant to a common promotional plan,
 20 and providing for common or shared elements or interests in real
 21 property. This definition shall not apply to any form of
 22 timesharing.

23 This definition shall specifically include, but shall not be limited
 24 to, property subject to the "Condominium Act," P.L.1969, c.257
 25 (C.46:8B-1 et seq.), any form of homeowners' association, any
 26 housing cooperative or to any community trust or other trust device.

27 This definition shall be construed liberally to effectuate the
 28 purposes of this act.

29 i. "Common promotional plan" means any offer for the
 30 disposition of lots, parcels, units or interests of real property by a
 31 single person or group of persons acting in concert, where such lots,
 32 parcels, units or interests are contiguous, or are known, designated
 33 or advertised as a common entity or by a common name.

34 j. "Advertising" means and includes the publication or causing
 35 to be published of any information offering for disposition or for
 36 the purpose of causing or inducing any other person to purchase an
 37 interest in a planned real estate development, including the land
 38 sales contract to be used and any photographs or drawings or artist's
 39 representations of physical conditions or facilities on the property
 40 existing or to exist by means of any:

- 41 (1) Newspaper or periodical;
- 42 (2) Radio or television broadcast;
- 43 (3) Written or printed or photographic matter;
- 44 (4) Billboards or signs;
- 45 (5) Display of model houses or units;
- 46 (6) Material used in connection with the disposition or offer of
 47 the development by radio, television, telephone or any other
 48 electronic means; or

1 (7) Material used by developers or their agents to induce
2 prospective purchasers to visit the development, particularly
3 vacation certificates which require the holders of such certificates to
4 attend or submit to a sales presentation by a developer or his agents.

5 "Advertising" does not mean and shall not be deemed to include:
6 Stockholder communications such as annual reports and interim
7 financial reports, proxy materials, registration statements, securities
8 prospectuses, applications for listing securities on stock exchanges,
9 and the like; all communications addressed to and relating to the
10 account of any person who has previously executed a contract for
11 the purchase of the subdivider's lands except when directed to the
12 sale of additional lands.

13 k. "Non-binding reservation agreement" means an agreement
14 between the developer and a purchaser and which may be canceled
15 without penalty by either party upon written notice at any time prior
16 to the formation of a contract for the disposition of any lot, parcel,
17 unit or interest in a planned real estate development.

18 l. "Blanket encumbrance" means a trust deed, mortgage,
19 judgment, or any other lien or encumbrance, including an option or
20 contract to sell or a trust agreement, affecting a development or
21 affecting more than one lot, unit, parcel, or interest therein, but does
22 not include any lien or other encumbrance arising as the result of
23 the imposition of any tax assessment by any public authority.

24 m. "Conversion" means any change with respect to a real estate
25 development or subdivision, apartment complex or other entity
26 concerned with the ownership, use or management of real property
27 which would make such entity a planned real estate development.

28 n. "Association" means an association for the management of
29 common elements and facilities, organized pursuant to section 1 of
30 P.L.1993, c.30 (C.45:22A-43).

31 o. "Executive board" means the executive board of an
32 association, as provided for in section 3 of P.L.1993, c.30
33 (C.45:22A- 45).

34 p. "Unit" means any lot, parcel, unit or interest in a planned
35 real estate development that is, or is intended to be, a separately
36 owned area thereof.

37 q. "Association member" means the owner of a unit within a
38 planned real estate development, or a unit's tenant to the extent that
39 the governing documents of the planned real estate development
40 permit tenant membership in the association, and the developer to
41 the extent that the development contains unsold lots, parcels, units,
42 or interests pursuant to subsection c. of section 1 of P.L.1993, c.30
43 (C.45:22A-43). This definition shall not be construed to provide
44 the developer a different transition obligation than that required
45 pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), or to require
46 that the developer is allowed to vote in executive board elections.

47 ²【This】 Pursuant to subsection e. of section 2 of P.L.1993, c.30
48 (C.45:22A-44), this² definition shall not require an owner with non-
49 payer status to be an association member.

1 r. "Good standing" means the status - solely with respect to
2 eligibility to (1) vote in executive board elections, (2) vote to
3 amend the bylaws, and (3) nominate or run for any membership
4 position on the executive board - applicable to an association
5 member who is current on the payment of common expenses, late
6 fees, interest on unpaid assessments, legal fees, or other charges
7 lawfully assessed, and which association member has not failed to
8 satisfy a judgment for common expenses, late fees, interest on
9 unpaid assessments, legal fees, or other charges lawfully assessed.
10 An association member is in good standing if he is in full
11 compliance with a settlement agreement with respect to the
12 payments of assessments, legal fees or other charges lawfully
13 assessed, or the association member has a pending, unresolved
14 dispute concerning charges assessed which dispute has been
15 initiated: through a valid alternative to litigation pursuant to
16 subsection c. of section 2 of P.L.1993, c.30 (C.45:22A-44); through
17 subsection (k) of section 14 of the "Condominium Act," P.L.1969,
18 c.257 (C.46:8B-14); or through a pertinent court action.

19 s. "Voting-eligible tenant" means a tenant of a unit within a
20 planned real estate development in which:

21 (1) the governing documents of the development permit the
22 tenant's participation in executive board elections, and

23 (2) either (a) the development has allowed tenant participation
24 in executive board elections as a standard practice prior to the
25 effective date of P.L.2017, c.106 (C.45:22A-45.1 et al.), or (b) the
26 owner has affirmatively acknowledged the right of the tenant to
27 vote through a provision of a written lease agreement or separate
28 document.

29 This definition shall not be construed to affect voting as an agent
30 of the owner through a proxy or power of attorney. Pursuant to
31 subsection d. of this section, if the development is a cooperative
32 corporation, then, an "owner" or holder of a "proprietary lease," as
33 those terms are defined under subsections i. and k. of section 3 of
34 "The Cooperative Recording Act of New Jersey," P.L.1987, c.381
35 (C.46:8D-3), is also an "owner," not a tenant, for the purposes of
36 P.L.1993, c.30 (C.45:22A-43 et seq.).

37 t. "Compulsory charge" means an assessment, fee, or other
38 charge that the recorded declaration, master deed, bylaws or other
39 recorded governing document of a planned real estate development
40 requires the owner of a lot, parcel, unit, or interest in real property
41 to pay on a consistent, repeated basis as a condition of ownership.

42 u.¹ "Non-payer status" means the status of an owner of real
43 property within a planned real estate development, provided that
44 with respect to the ¹owner's lot, parcel, unit, or interest in¹ real
45 property ²[:

46 (1) the transition from developer control occurred prior to ¹July
47 13, 2017,¹ the effective date of P.L.2017, c.106 (C.45:22A-45.1 et
48 al.); and

1 (2) ² the association ¹ [did not have authority to compel
2 payment of assessments or other charges] was a voluntary
3 association¹ immediately prior to ¹ [the effective date of P.L.2017,
4 c.106 (C.45:22A-45.1 et al.)] July 13, 2017 ², the effective date of
5 P.L.2017, c.106 (C.45:22A-45.1 et al.)².

6 v. “Voluntary association” means an association of a planned
7 real estate development that ²:

8 (1)² functions pursuant to governing documents, however
9 denominated, that do not expressly mandate the owner to be an
10 association member or expressly authorize the association to require
11 the owner to pay a compulsory charge ² [. “Voluntary association”
12 includes the association of a planned real estate development that is
13 voluntary with respect to some owners, who have non-payer status,
14 but non-voluntary with respect to others¹] ; and

15 (2) initially formed prior to the effective date of P.L.1977, c.419
16 (C.45:22A-21 et seq.)².

17 (cf: P.L.2017, c.106, s.2)

18

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

21 1. a. A developer subject to the registration requirements of
22 section 6 of P.L.1977, c.419 (C.45:22A-26) shall organize or cause
23 to be organized an association whose obligation it shall be to
24 manage the common elements and facilities. The association shall
25 be formed on or before the filing of the master deed or declaration
26 of covenants and restrictions, and may be formed as a for-profit or
27 nonprofit corporation, unincorporated association, or any other form
28 permitted by law. The application of P.L.1993, c.30 (C.45:22A-43
29 et seq.) to the association of an existing planned real estate
30 development shall not be limited by:

31 (1) whether the developer has been subject to, or exempted
32 from, the registration requirements of section 6 of P.L.1977, c.419
33 (C.45:22A-26); or

34 (2) the development's date of establishment.

35 b. Nothing in subsection a. of this section shall be construed to
36 require the registration of a planned real estate development that is
37 not otherwise required to register pursuant to section 6 of P.L.1977,
38 c.419 (C.45:22A-26).

39 c. Membership in the association of a planned real estate
40 development shall be comprised of each owner within the planned
41 real estate development, provided that in a voluntary association
42 membership shall include only those owners with non-payer status
43 who have, in writing, opted into membership in the association, and
44 may include the developer if the development contains unsold lots,
45 parcels, units, or interests. An association may permit tenant
46 participation in executive board elections, tenant membership in the
47 association, or both. A voting-eligible tenant shall have only the
48 same voting rights as the owner of the unit that the tenant leases,

1 and such voting rights shall be in place of and not in addition to the
2 rights of the owner of the leased unit, except as permitted under
3 paragraph (9) of subsection c. of section 6 of P.L.2017, c.106
4 (C.45:22A-45.2). Pursuant to paragraph (9) of subsection c. of
5 section 6 of P.L.2017, c.106 (C.45:22A-45.2), the votes associated
6 with a unit shall not be altered by the participation of voting-
7 eligible tenants.¹

8 (cf: P.L.2017, c.106, s.4)

9
10 ¹**[2.] 4.**¹ Section 2 of P.L.1993, c.30 ²**[(45:22A-44)]**
11 **(C.45:22A-44)**² is amended to read as follows:

12 2. a. Subject to the master deed, declaration of covenants and
13 restrictions or other instruments of creation, the association may do
14 all that it is legally entitled to do under the laws applicable to its
15 form of organization.

16 b. The association shall exercise its powers and discharge its
17 functions in a manner that protects and furthers the health, safety
18 and general welfare of the residents of the community.

19 c. The association shall provide a fair and efficient procedure
20 for the resolution of disputes between individual unit owners and
21 the association, and between unit owners, which shall be readily
22 available as an alternative to litigation.

23 d. The association may assert tort claims concerning the
24 common elements and facilities of the development as if the claims
25 were asserted directly by the unit owners individually.

26 e. ¹(1)¹ The association shall not compel an owner with non-
27 payer status to pay ¹**[assessments or other charges]** a compulsory
28 charge¹ or be a member of the association.

29 ¹(2) So long as the governing documents of the development do
30 not expressly state otherwise, a voluntary association shall permit
31 an owner with non-payer status who has voluntarily become a
32 member, or any successor in title, to voluntarily rescind their
33 membership by written notice to the association.¹

34 ²f. The association is not required to offer election participation
35 or voting rights for a person with non-payer status.²

36 (cf: P.L.1993, c.30, s.2)

37
38 ¹**[3.] 5.**¹ Section 1 of P.L.2017, c.106 (C.45:22A-45.1) is
39 amended to read as follows:

40 1. The Legislature finds and declares that:

41 a. In addition to living under State, county, and municipal
42 government, recent estimates conclude that over one million New
43 Jersey residents currently live under the governance of a common
44 interest community association, such as a condominium,
45 cooperative, or homeowners' association;

46 b. The owners and residents of these communities often benefit
47 from minimized maintenance responsibilities and greater assurances

1 that neighboring properties will follow a predictable development
2 scheme;

3 c. Along with these benefits, living under a community
4 association also creates the necessity of paying assessments and
5 fees in addition to the State and local taxes that other State residents
6 pay, and requires compliance with property regulations that may be
7 more stringent than those required by municipal government alone;

8 d. Because of the significant influence community associations
9 have over the lives of their residents and because community
10 associations are creatures of State law, it is unfair and runs contrary
11 to American democratic values for these communities to be
12 governed by trustees who are not elected in a fair and open manner;

13 e. The supplement to "The Planned Real Estate Development
14 Full Disclosure Act" ("PREDFDA"), P.L.1977, c.419 (C.45:22A-21
15 et seq.), specifically, P.L.1993, c.30 (C.45:22A-43 et seq.),
16 provided all owners and residents in common interest residential
17 communities with specific rights and protections. These rights and
18 protections exist regardless of whether a developer established the
19 community prior to the effective date of PREDFDA. The
20 supplement was not specific in declaring that all unit owners were
21 members of the association or in recognizing that, along with
22 certain specific tenant residents, all unit owners were entitled to
23 participate fully in elections of members of the executive board;

24 f. Unit owners living in community associations should have
25 the right to nominate candidates, run for, freely elect, and be elected
26 to the executive boards that govern the communities; and

27 g. It is necessary and in the public interest for the Legislature
28 to enact legislation to amend PREDFDA in order to:

29 (1) Establish that all unit owners, ²with limited exception
30 defined pursuant to subsection q. of section 3 of P.L.1977, c.419
31 (C.45:22A-23) as association members², are members of the
32 association and provide basic election participation rights for
33 certain residents of common interest communities, including the
34 right of resident owners in good standing to nominate any unit
35 owner in good standing as a candidate for any position on the
36 executive board, run, appear on the ballot, and be elected to any
37 executive board position, in every executive board election, and for
38 those rights to apply regardless of the date of a community's
39 establishment; and

40 (2) Establish that, except under the very limited exceptions
41 provided, a person may not serve on an executive board unless
42 elected through a process consistent with the provisions of
43 PREDFDA.

44 (cf: P.L.2017, c.106, s.1)

45

46 ²6. (New section) If an association has recorded a lien for non-
47 payment of a compulsory charge on or after July 13, 2017 that is not
48 authorized, pursuant to P.L. , c. (C.) (pending before the

1 Legislature as this bill), due to the non-payer status of the unit owner,
2 the lien shall be null and void.²

3
4 ²7. The Commissioner of Community Affairs, in accordance with
5 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
6 seq.), shall adopt the rules and regulations necessary for the
7 implementation of P.L. , c. (C.) (pending before the
8 Legislature as this bill). The commissioner is authorized to notify
9 county recording offices of liens that are null and void pursuant to
10 section 6 of P.L. , c. (C.) (pending before the Legislature as
11 this bill).²

12
13 ¹~~[4.]~~ ²~~[6.1]~~ 8.² This act shall take effect immediately ¹and
14 shall be retroactive to July 13, 2017¹.