

[Third Reprint]

SENATE, No. 3661

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 13, 2019

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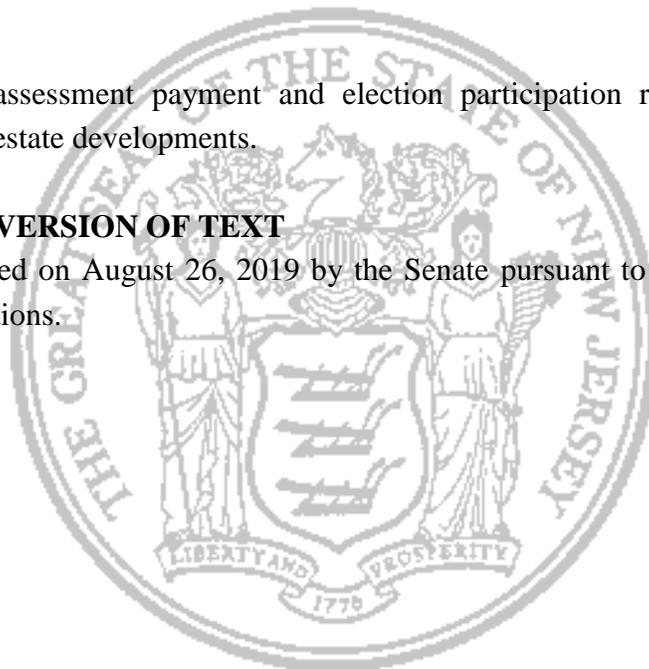
Assemblymen DePhillips, Space and Auth

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended on August 26, 2019 by the Senate pursuant to the Governor's recommendations.



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

1 AN ACT concerning assessment payment and election participation
2 in planned real estate developments, ³and³ ¹supplementing
3 P.L.1977, c.419 (C.45:22A-21 et seq.) ³[¹ and amending
4 various parts of the statutory law]³.

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

8

9 ¹1. The Legislature finds and declares that:

10 ³[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.] a.³ Certain associations have ³[further]³ 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 ³[c.] b.³ It is necessary and in the public interest for the
21 Legislature to ³[:

22 (1)]³ 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
24 ³[compulsory] assessments and other³ charges ³[; and

25 (2) protect property owners from the issuance of sudden,
26 unanticipated compulsory charges in planned real
27 estate developments where assessments have historically been
28 voluntary]³ .¹

29

30 ³[¹[1.] 2.¹ Section 3 of P.L.1977, c.419 (C.45:22A-23) is
31 amended to read as follows:

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

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

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

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

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.

³Senate amendments adopted in accordance with Governor's
recommendations August 26, 2019.

1 d. "Purchaser" or "owner" means any person or persons who
2 acquires a legal or equitable interest in a unit, lot, or parcel in a
3 planned real estate development, and shall be deemed to include a
4 prospective purchaser or owner. However, as used in P.L.1993,
5 c.30 (C.45:22A-43 et seq.), "owner" means any person owning a
6 unit, or an "owner" or holder of a "proprietary lease," as those terms
7 are defined under subsections i. and k. of section 3 of "The
8 Cooperative Recording Act of New Jersey," P.L.1987, c.381
9 (C.46:8D-3), if the development is a cooperative. ²[This definition
10 shall not require an association to offer election participation or
11 voting rights for a person with non-payer status, or allow an
12 association to impose responsibilities on a person with non-payer
13 status to pay] ¹[assessments or other charges] ²[compulsory
14 charges] ¹²

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

16 f. "Commissioner" means the Commissioner of Community
17 Affairs.

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

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

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

31 This definition shall be construed liberally to effectuate the
32 purposes of this act.

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

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

- 45 (1) Newspaper or periodical;
- 46 (2) Radio or television broadcast;
- 47 (3) Written or printed or photographic matter;
- 48 (4) Billboards or signs;

1 (5) Display of model houses or units;

2 (6) Material used in connection with the disposition or offer of
3 the development by radio, television, telephone or any other
4 electronic means; or

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

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

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

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

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

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

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

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

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

1 that the developer is allowed to vote in executive board elections.
2 ²[This] Pursuant to subsection e. of section 2 of P.L.1993, c.30
3 (C.45:22A-44), this² definition shall not require an owner with non-
4 payer status to be an association member.

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

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

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

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

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

41 t. ¹"Compulsory charge" means an assessment, fee, or other
42 charge that the recorded declaration, master deed, bylaws or other
43 recorded governing document of a planned real estate development
44 requires the owner of a lot, parcel, unit, or interest in real property
45 to pay on a consistent, repeated basis as a condition of ownership.

46 u.¹ "Non-payer status" means the status of an owner of real
47 property within a planned real estate development, provided that

1 with respect to the ¹owner's lot, parcel, unit, or interest in¹ real
2 property ²]:

3 (1) the transition from developer control occurred prior to ¹July
4 13, 2017,¹ the effective date of P.L.2017, c.106 (C.45:22A-45.1 et
5 al.); and

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

11 v. "Voluntary association" means an association of a planned
12 real estate development that ²:

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

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

22 (cf: P.L.2017, c.106, s.2)]³

23
24 ³[¹³. Section 1 of P.L.1993, c.30 (45:22A-43) is amended to
25 read as follows:

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

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

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

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

44 c. Membership in the association of a planned real estate
45 development shall be comprised of each owner within the planned
46 real estate development, provided that in a voluntary association
47 membership shall include only those owners with non-payer status

1 who have, in writing, opted into membership in the association, and
2 may include the developer if the development contains unsold lots,
3 parcels, units, or interests. An association may permit tenant
4 participation in executive board elections, tenant membership in the
5 association, or both. A voting-eligible tenant shall have only the
6 same voting rights as the owner of the unit that the tenant leases,
7 and such voting rights shall be in place of and not in addition to the
8 rights of the owner of the leased unit, except as permitted under
9 paragraph (9) of subsection c. of section 6 of P.L.2017, c.106
10 (C.45:22A-45.2). Pursuant to paragraph (9) of subsection c. of
11 section 6 of P.L.2017, c.106 (C.45:22A-45.2), the votes associated
12 with a unit shall not be altered by the participation of voting-
13 eligible tenants.¹

14 (cf: P.L.2017, c.106, s.4)]³

15

16 ³[¹[2.] 4.¹ Section 2 of P.L.1993, c.30 ²[(45:22A-44)]
17 (C.45:22A-44)² is amended to read as follows:

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

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

25 c. The association shall provide a fair and efficient procedure
26 for the resolution of disputes between individual unit owners and
27 the association, and between unit owners, which shall be readily
28 available as an alternative to litigation.

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

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

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

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

42 (cf: P.L.1993, c.30, s.2)]³

43

44 ³[¹[3.] 5.¹ Section 1 of P.L.2017, c.106 (C.45:22A-45.1) is
45 amended to read as follows:

46 1. The Legislature finds and declares that:

- 1 a. In addition to living under State, county, and municipal
2 government, recent estimates conclude that over one million New
3 Jersey residents currently live under the governance of a common
4 interest community association, such as a condominium,
5 cooperative, or homeowners' association;
- 6 b. The owners and residents of these communities often benefit
7 from minimized maintenance responsibilities and greater assurances
8 that neighboring properties will follow a predictable development
9 scheme;
- 10 c. Along with these benefits, living under a community
11 association also creates the necessity of paying assessments and
12 fees in addition to the State and local taxes that other State residents
13 pay, and requires compliance with property regulations that may be
14 more stringent than those required by municipal government alone;
- 15 d. Because of the significant influence community associations
16 have over the lives of their residents and because community
17 associations are creatures of State law, it is unfair and runs contrary
18 to American democratic values for these communities to be
19 governed by trustees who are not elected in a fair and open manner;
- 20 e. The supplement to "The Planned Real Estate Development
21 Full Disclosure Act" ("PREDFDA"), P.L.1977, c.419 (C.45:22A-21
22 et seq.), specifically, P.L.1993, c.30 (C.45:22A-43 et seq.),
23 provided all owners and residents in common interest residential
24 communities with specific rights and protections. These rights and
25 protections exist regardless of whether a developer established the
26 community prior to the effective date of PREDFDA. The
27 supplement was not specific in declaring that all unit owners were
28 members of the association or in recognizing that, along with
29 certain specific tenant residents, all unit owners were entitled to
30 participate fully in elections of members of the executive board;
- 31 f. Unit owners living in community associations should have
32 the right to nominate candidates, run for, freely elect, and be elected
33 to the executive boards that govern the communities; and
- 34 g. It is necessary and in the public interest for the Legislature
35 to enact legislation to amend PREDFDA in order to:
- 36 (1) Establish that all unit owners, ²[with limited exception]
37 defined pursuant to subsection q. of section 3 of P.L.1977, c.419
38 (C.45:22A-23) as association members², are members of the
39 association and provide basic election participation rights for
40 certain residents of common interest communities, including the
41 right of resident owners in good standing to nominate any unit
42 owner in good standing as a candidate for any position on the
43 executive board, run, appear on the ballot, and be elected to any
44 executive board position, in every executive board election, and for
45 those rights to apply regardless of the date of a community's
46 establishment; and
- 47 (2) Establish that, except under the very limited exceptions
48 provided, a person may not serve on an executive board unless

1 elected through a process consistent with the provisions of
2 PREDFDA.

3 (cf: P.L.2017, c.106, s.1)]³

4

5 ³[²6.] 2. a. An association in communities established prior to
6 the passage of the Planned Real Estate Financial Disclosure Act,
7 (“PREDFDA”), P.L.1977, c.419 (C.45:22A-21 et seq.), shall not be
8 permitted to require property owners to pay assessments and other
9 charges where the property owner’s title record does not impose
10 such an obligation, unless otherwise provided by law.

11 b.³ If an association has recorded a lien for non-payment ³[of a
12 compulsory charge]³ on or after July 13, 2017 that is ³[not
13 authorized] based solely on the misinterpretation that P.L.2017,
14 c.106 imposed new responsibilities on property owners to pay
15 assessments or other charges³, pursuant to P.L. , c. (C.)
16 (pending before the Legislature as this bill), ³[due to the non-payer
17 status of the unit owner,]³ the lien shall be null and void.² ³The
18 association shall promptly discharge such lien of record and provide
19 notice of this action to the property owner. If an association fails to
20 discharge such null and void lien, the owner may bring an action to
21 have the lien discharged and, if successful, shall be entitled to
22 petition the court for an award of counsel fees.³

23

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

32

33 ¹[^{4.}]²[^{6.}¹]³[^{8.}²]³ This act shall take effect immediately
34 and shall be retroactive to July 13, 2017¹.