

ASSEMBLY, No. 2445

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

SYNOPSIS

Prohibits condominium associations from assessing insurance deductibles to individual unit owners or groups of unit owners.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/1/2020)

1 AN ACT concerning condominium association insurance policies
2 and amending P.L.1969, c.257.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 3 of P.L.1969, c.257 (C.46:8B-3) is amended to read
8 as follows:

9 3. The following words and phrases as used in **[this act]**
10 P.L.1969, c.257 (C.46:8B-1 et seq.) shall have the meanings set
11 forth in this section unless the context clearly indicates otherwise:

12 a. "Assigns" means any person to whom rights of a unit owner
13 have been validly transferred by lease, mortgage or otherwise.

14 b. "Association" means the entity responsible for the
15 administration of a condominium, which entity may be incorporated
16 or unincorporated.

17 c. "Bylaws" means the governing regulations adopted under
18 **[this act]** P.L.1969, c.257 (C.46:8B-1 et seq.) for the administration
19 and management of the property.

20 d. "Common elements" means:

21 (i) the land described in the master deed;

22 (ii) as to any improvement, the foundations, structural and
23 bearing parts, supports, main walls, roofs, basements, halls,
24 corridors, lobbies, stairways, elevators, entrances, exits and other
25 means of access, excluding any specifically reserved or limited to a
26 particular unit or group of units;

27 (iii) yards, gardens, walkways, parking areas and driveways,
28 excluding any specifically reserved or limited to a particular unit or
29 group of units;

30 (iv) portions of the land or any improvement or appurtenance
31 reserved exclusively for the management, operation or maintenance
32 of the common elements or of the condominium property;

33 (v) installations of all central services and utilities;

34 (vi) all apparatus and installations existing or intended for
35 common use;

36 (vii) all other elements of any improvement necessary or
37 convenient to the existence, management, operation, maintenance
38 and safety of the condominium property or normally in common
39 use; and

40 (viii) such other elements and facilities as are designated in the
41 master deed as common elements.

42 e. "Common expenses" means expenses for which the unit
43 owners are proportionately liable, including but not limited to:

44 (i) all expenses of administration, maintenance, repair and
45 replacement of the common elements, including deductibles on
46 insurance coverage;

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.

- 1 (ii) expenses agreed upon as common by all unit owners; and
2 (iii) expenses declared common by provisions of **【this act】**
3 P.L.1969, c.257 (C.46:8B-1 et seq.) or by the master deed or by the
4 bylaws.
- 5 f. "Common receipts" means:
6 (i) rent and other charges derived from leasing or licensing the
7 use of common elements;
8 (ii) funds collected from unit owners as common expenses or
9 otherwise; and
10 (iii) receipts designated as common by the provisions of **【this**
11 **act】** P.L.1969, c.257 (C.46:8B-1 et seq.) or by the master deed or
12 the bylaws.
- 13 g. "Common surplus" means the excess of all common receipts
14 over all common expenses.
- 15 h. "Condominium" means the form of ownership of real
16 property under a master deed providing for ownership by one or
17 more owners of units of improvements together with an undivided
18 interest in common elements appurtenant to each such unit.
- 19 i. "Condominium property" means the land covered by the
20 master deed, whether or not contiguous and all improvements
21 thereon, all owned either in fee simple or under lease, and all
22 easements, rights and appurtenances belonging thereto or intended
23 for the benefit thereof.
- 24 j. "Developer" means the person or persons who create a
25 condominium or lease, sell or offer to lease or sell a condominium
26 or units of a condominium in the ordinary course of business, but
27 does not include an owner or lessee of a unit who has acquired his
28 unit for his own occupancy.
- 29 k. "Limited common elements" means those common elements
30 which are for the use of one or more specified units to the exclusion
31 of other units.
- 32 l. "Majority" or "majority of the unit owners" means the
33 owners of more than **【50%】** 50 percent of the aggregate in interest
34 of the undivided ownership of the common elements as specified in
35 the master deed. If a different percentage of unit owners is required
36 to be determined under **【this act】** P.L.1969, c.257 (C.46:8B-
37 1 et seq.) or under the master deed or bylaws for any purpose, such
38 different percentage of owners shall mean the owners of an equal
39 percentage of the aggregate in interest of the undivided ownership
40 of the common elements as so specified.
- 41 m. "Master deed" means the master deed recorded under the
42 terms of section 8 of **【this act】** P.L.1969, c.257 (C.46:8B-1 et seq.),
43 as such master deed may be amended or supplemented from time to
44 time, being the instrument by which the owner in fee simple or
45 lessee of the property submits it to the provisions of this chapter.

1 n. "Person" means an individual, firm, corporation,
2 partnership, association, trust or other legal entity, or any
3 combination thereof.

4 o. "Unit" means a part of the condominium property designed
5 or intended for any type of independent use, having a direct exit to a
6 public street or way or to a common element or common elements
7 leading to a public street or way or to an easement or right of way
8 leading to a public street or way, and includes the proportionate
9 undivided interest in the common elements and in any limited
10 common elements assigned thereto in the master deed or any
11 amendment thereof.

12 p. "Unit deed" means a deed of conveyance of a unit in
13 recordable form.

14 q. "Unit owner" means the person or persons owning a unit in
15 fee simple.

16 (cf: P.L.1979, c.157, s.1)

17
18 2. Section 15 of P.L.1969, c.257 (C.46:8B-15) is amended to
19 read as follows:

20 15. Subject to the provisions of the master deed, the bylaws,
21 rules and regulations and the provisions of **【this act】** P.L.1969,
22 c.257 (C.46:8B-1 et seq.) or other applicable law, the association
23 shall have the following powers:

24 (a) Whether or not incorporated, the association shall be an
25 entity which shall act through its officers and may enter into
26 contracts, bring suit and be sued. If the association is not
27 incorporated, it may be deemed to be an entity existing pursuant to
28 **【this act】** P.L.1969, c.257 (C.46:8B-1 et seq.) and a majority of the
29 members of the governing board or of the association, as the case
30 may be, shall constitute a quorum for the transaction of business.
31 Process may be served upon the association by serving any officer
32 of the association or by serving the agent designated for service of
33 process. Service of process upon the association shall not constitute
34 service of process upon any individual unit owner.

35 (b) The association shall have access to each unit from time to
36 time during reasonable hours as may be necessary for the
37 maintenance, repair or replacement of any common elements
38 therein or accessible therefrom or for making emergency repairs
39 necessary to prevent damage to common elements or to any other
40 unit or units. The association may charge the unit owner for the
41 repair of any common element damaged by the unit owner or his
42 tenant; provided, however, the association shall not pass the cost of
43 an insurance deductible to a unit owner or his tenant, or a group of
44 unit owners or their tenants for the repair of any common element
45 or unit not intentionally damaged by them.

46 (c) The association may purchase units in the condominium and
47 otherwise acquire, hold, lease, mortgage and convey the same. It

1 may also lease or license the use of common elements in a manner
2 not inconsistent with the rights of unit owners.

3 (d) The association may acquire or enter into agreements
4 whereby it acquires leaseholds, memberships or other possessory or
5 use interests in lands or facilities including, but not limited to
6 country clubs, golf courses, marinas and other recreational
7 facilities, whether or not contiguous to the condominium property,
8 intended to provide for the enjoyment, recreation or other use or
9 benefit of the unit owners. If fully described in the master deed or
10 bylaws, the fees, costs and expenses of acquiring, maintaining,
11 operating, repairing and replacing any such memberships, interests
12 and facilities shall be common expenses. If not so described in the
13 master deed or bylaws as originally recorded, no such membership
14 interest or facility shall be acquired except pursuant to amendment
15 of or supplement to the master deed or bylaws duly adopted as
16 provided therein and in **【this act】** P.L.1969, c.257 (C.46:8B-
17 1 et seq.). In the absence of such amendment or supplement, if
18 some but not all unit owners desire any such acquisition and agree
19 to assume among themselves all costs of acquisition, maintenance,
20 operation, repair and replacement thereof, the association may
21 acquire or enter into an agreement to acquire the same as limited
22 common elements appurtenant only to the units of those unit owners
23 who have agreed to bear the costs and expenses thereof. Such costs
24 and expenses shall be assessed against and collected from the
25 agreeing unit owners in the proportions in which they share as
26 among themselves in the common expenses in the absence of some
27 other unanimous agreement among themselves. No other unit owner
28 shall be charged with any such cost or expense; provided, however,
29 that nothing herein shall preclude the extension of the interests in
30 such limited common elements to additional unit owners by
31 subsequent agreement with all those unit owners then having an
32 interest in such limited common elements.

33 (e) The association may levy and collect assessments duly made
34 by the association for a share of common expenses or otherwise,
35 including any other moneys duly owed the association, upon proper
36 notice to the appropriate unit owner, together with interest thereon,
37 late fees and reasonable attorneys' fees, if authorized by the master
38 deed or bylaws.

39 All funds collected by an association shall be maintained
40 separately in the association's name. For investment purposes only,
41 reserve funds may be commingled with operating funds of the
42 association. Commingled operating and reserve funds shall be
43 accounted for separately, and a commingled account shall not, at
44 any time, be less than the amount identified as reserve funds. A
45 manager or business entity managing a condominium, or an agent,
46 employee, officer, or director of an association, shall not
47 commingle any association funds with his or her funds or with the
48 funds of any other condominium association or the funds of another

1 association as defined in section 3 of P.L.1977, c.419 (C.45:22A-
2 23).

3 If authorized by the master deed or bylaws, the association may
4 levy and collect a capital contribution, membership fee or other
5 charge upon the initial sale or subsequent resale of a unit, which
6 collection shall be earmarked for the purpose of maintenance of or
7 improvements to common elements to defray common expenses or
8 otherwise, provided that such charge shall not exceed nine times the
9 amount of the most recent monthly common expense assessment for
10 that unit.

11 (f) If authorized by the master deed or bylaws, the association
12 may impose reasonable fines upon unit owners for failure to comply
13 with provisions of the master deed, bylaws or rules and regulations,
14 subject to the following provisions:

15 A fine for a violation or a continuing violation of the master
16 deed, bylaws or rules and regulations shall not exceed the maximum
17 monetary penalty permitted to be imposed for a violation or a
18 continuing violation under section 19 of the "Hotel and Multiple
19 Dwelling Law," P.L.1967, c.76 (C.55:13A-19).

20 On roads or streets with respect to which Title 39 of the Revised
21 Statutes is in effect under section 1 of P.L.1945, c.284 (C.39:5A-1),
22 an association may not impose fines for moving automobile
23 violations.

24 A fine shall not be imposed unless the unit owner is given
25 written notice of the action taken and of the alleged basis for the
26 action, and is advised of the right to participate in a dispute
27 resolution procedure in accordance with subsection (k) of section 14
28 of P.L.1969, c.257 (C.46:8B-14). A unit owner who does not
29 believe that the dispute resolution procedure has satisfactorily
30 resolved the matter shall not be prevented from seeking a judicial
31 remedy in a court of competent jurisdiction.

32 (g) Such other powers as may be set forth in the master deed or
33 bylaws, if not prohibited by P.L.1969, c.257 (C.46:8B-1 et seq.) or
34 any other law of this State.

35 (cf: P.L.2007, c.165, s.1)

36

37 3. Section 24 of P.L.1969, c.257 (C.46:8B-24) is amended to
38 read as follows:

39 24. (a) Damage to or destruction of any improvements on the
40 condominium property or any part thereof or to a common element
41 or elements or any part thereof covered by insurance required to be
42 maintained by the association shall be repaired and restored by the
43 association using the proceeds of any such insurance. **[The]**
44 Except as provided in subsection (b) of section 15 of P.L.1969,
45 c.257 (C.46:8B-15), the unit owners directly affected shall be
46 assessed on an equitable basis for any deficiency and shall share in
47 any excess.

1 (b) If the proceeds of such insurance shall be inadequate by a
2 substantial amount to cover the estimated cost of restoration of an
3 essential improvement or common element or if such damage shall
4 constitute substantially total destruction of the condominium
5 property or of one or more of the buildings comprising the
6 condominium property or if ~~75%~~ 75 percent of the unit owners
7 directly affected by such damage or destruction voting in
8 accordance with the procedures established by the by-laws shall
9 determine not to repair or restore, the association shall proceed to
10 realize upon the salvage value of that portion of the condominium
11 property so damaged or destroyed either by sale or such other
12 means as the association may deem advisable and shall collect the
13 proceeds of any insurance. Thereupon the net proceeds of such
14 sale, together with the net proceeds of such insurance shall be
15 considered as one fund to be divided among the unit owners directly
16 affected by such damage or destruction in proportion to their
17 respective undivided ownership of the common elements. Any
18 liens or encumbrances on any affected unit shall be relegated to the
19 interest in the fund of the unit owners.

20 (c) The master deed or the by-laws may make other and
21 different provision covering the eventualities set forth in paragraphs
22 (a) and (b) of this section or covering other results of damage or
23 destruction to any part or all of the condominium property,
24 notwithstanding the provisions of paragraphs (a) and (b). If the
25 master deed or by-laws shall require insurance against fire and other
26 casualty with respect to individual units, it shall also provide for the
27 application of the proceeds and the rights and obligations of unit
28 owners in case of damage or destruction.

29 (cf: P.L.1969, c.257, s.24)

30
31 4. This act shall take effect immediately.
32
33

34 STATEMENT

35
36 This bill would prevent condominium associations from
37 assessing insurance deductibles to individual unit owners or groups
38 of unit owners. Under current law, a condominium association can
39 pass the cost of any deductible arising from a claim under the
40 association's insurance policy to an individual unit owner. This bill
41 would prevent condominium associations from placing the burden
42 of a deductible on one owner or a group of owners. The bill would
43 ensure that unit owners realize the full benefit of an association's
44 insurance policy, which is the pooling of risks among a large group
45 of similarly situated individuals.