

ASSEMBLY, No. 279

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen BATEMAN and KAVANAUGH

1 AN ACT concerning the service of certain administrative notices,
2 rulings, decisions and orders and the time periods in which to apply
3 for certain hearings, and amending and supplementing various parts
4 of the statutory law.

5

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

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9 1. Section 13 of P.L.1977, c.419 (C.45:22A-33) is amended to
10 read as follows:

11 13. a. If the agency determines after notice and hearing that a
12 person has:

13 (1) Violated any provision of this act;

14 (2) Directly or through an agent or employee knowingly engaged
15 in any false, deceptive, or misleading advertising, promotional, or sales
16 methods to offer or dispose of a unit;

17 (3) Made any substantial change in the plan of disposition and
18 development of the subdivision subsequent to the order of registration
19 without obtaining prior written approval from the agency;

20 (4) Disposed of any units, lots, parcels, or interests in a planned
21 real estate development which have not been registered with the
22 agency, or;

23 (5) Violated any lawful order or rule of the agency; it may issue an
24 order requiring the person to cease and desist from the unlawful
25 practice or to take such other affirmative action as in the judgment of
26 the agency will carry out the purposes of this act.

27 b. If the agency makes a finding of fact in writing that the public
28 interest will be irreparably harmed by delay in issuing an order, it may
29 issue a temporary cease and desist order. Every temporary cease and
30 desist order shall include in its terms a provision that upon request a
31 hearing shall be held within 10 days of such request to determine
32 whether or not it becomes permanent. [Such temporary cease and

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

Matter underlined thus is new matter.

1 desist order shall be forwarded by certified mail.]

2 (cf: P.L.1977, c.419, s.13)

3

4 2. Section 6 of P.L.1993, c.258 (C.45:22A-54) is amended to read
5 as follows:

6 6. Any person aggrieved by any order issued by the agency under
7 this act shall be entitled to a hearing before the Commissioner of
8 Community Affairs pursuant to the "Administrative Procedure Act,"
9 P.L.1968, c.410 (C.52:14B-1 et seq.). The application for such
10 hearing must be filed with the agency within 10 business days of [the
11 receipt by the applicant] the service of notice of the order complained
12 of. The Commissioner may extend the 10 day time period to make
13 written application for a hearing for an additional 10 business days if,
14 in the Commissioner's judgment, the interests of justice shall be served.
15 Pending the determination of the Commissioner, and upon application
16 therefor, the Commissioner may grant a stay of the order complained
17 of, provided that no such stay shall be granted except upon such terms
18 and conditions as will adequately protect the public.

19 (cf: P.L.1993, c.258, s.6)

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21 3. (New section) Notices, rulings, decisions and orders, including
22 all cease and desist orders, required or permitted to be issued and
23 served pursuant to "The Planned Real Estate Development Full
24 Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.) shall be
25 served as follows:

26 a. On the developer:

27 (1) By ordinary or certified mail to the person designated as
28 developer or agent on the registration statement of the development,
29 in the municipal tax records or in the records of the Secretary of State;

30 (2) By serving the document on the Secretary of State, who shall
31 be deemed the developer's agent for service of process, except that
32 reasonable efforts shall have first been made to serve the developer or
33 agent by ordinary mail and that a copy of the document is posted at a
34 conspicuous location on the premises;

35 (3) By personal delivery of the document to the developer or
36 agent;

37 (4) By leaving the document at the office or dwelling unit of the
38 developer or agent with a person 14 years of age or older; or

39 b. On any other person:

40 (1) By ordinary or certified mail to the person at the person's last
41 known address;

42 (2) By personal delivery of the document to the person;

43 (3) By leaving the document at the office or dwelling unit of the
44 person with a person 14 years of age or older.

45 c. The date of personal service or the third day after mailing shall
46 be considered the date of service.

1 4. (New section) Notices, rulings, decisions and orders required
2 or permitted to be issued and served pursuant to the "State Uniform
3 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) shall
4 be served as follows:

5 a. On the owner:

6 (1) By ordinary or certified mail to the person designated as owner
7 or agent on the construction permit application, in the municipal tax
8 records or in the records of the Secretary of State;

9 (2) By serving the document on the Secretary of State, who shall
10 be deemed the owner's agent for service of process, except that
11 reasonable efforts shall have first been made to serve the owner or
12 agent by ordinary mail and that a copy of the document is posted at a
13 conspicuous location on the premises;

14 (3) By personal delivery of the document to the owner or agent;

15 (4) By leaving the document at the office or dwelling unit of the
16 owner or agent with a person 14 years of age or older; or

17 b. On any other person:

18 (1) By ordinary or certified mail to the person at the person's last
19 known address;

20 (2) By personal delivery of the document to the person;

21 (3) By leaving the document at the office or dwelling unit of the
22 person with a person 14 years of age or older.

23 c. The date of personal service or the third day after mailing shall
24 be considered the date of service.

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26 5. Section 7 of P.L.1981, c.494 (C.52:27D-124g) is amended to
27 read as follows:

28 7. Any person aggrieved by any ruling, action, order, or notice of
29 the commissioner pursuant to this act shall be entitled to a hearing
30 pursuant to the "Administrative Procedure Act" (P.L.1968, c.410,
31 C.52:14B-1 et seq.). The application for the hearing must be filed
32 within 15 days of [the receipt by the applicant thereof] the service of
33 notice of the ruling, action, order or notice complained of. The
34 commissioner may extend the 15 day time period to make written
35 application for a hearing for an additional 15 days if, in the
36 commissioner's judgment, the interests of justice shall be served.
37 Pending the determination of the commissioner, and upon application
38 therefor, the commissioner may grant a stay of the ruling, action, order
39 or notice complained of, provided that no such stay shall be granted
40 except upon such terms and conditions as will adequately protect the
41 public.

42 (cf: P.L.1981, c.494, s.7)

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44 6. Section 15 of P.L.1983, c.383 (C.52:27D-206) is amended to
45 read as follows:

46 15. a. A person aggrieved by a ruling, action, order, or notice of

1 the commissioner pursuant to this act shall be entitled to an
2 administrative hearing. The application for the hearing shall be filed
3 with the commissioner by the 15th day after [receipt by the person] the
4 service of notice of the ruling, action, order or notice. The
5 commissioner may extend the 15 day time period to make written
6 application for a hearing for an additional 15 days if, in the
7 commissioner's judgment, the interests of justice shall be served.

8 All hearings shall be conducted by the Office of Administrative Law
9 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
10 (C.52:14B-1 et seq.) and P.L.1978, c.67 (C.52:14F-1 et seq.), and the
11 final decision shall be issued by the commissioner or his designee.

12 b. A person aggrieved by any ruling, action, order or notice of a
13 local enforcement agency pursuant to this act[,] shall be entitled to an
14 administrative hearing before the construction board of appeals created
15 pursuant to section 9 of P.L.1975, c.215 (C.52:27D-127)[,] having
16 jurisdiction in the municipality in which the building, structure or
17 premises is located. The applications for the hearing shall be filed with
18 the construction board of appeals by the 15th day after the [receipt by
19 the person] service of notice of the ruling, action, order or notice
20 complained of. The construction board of appeals may extend the 15
21 day time period to make written application for a hearing for an
22 additional 15 days if, in its judgment, the interests of justice shall be
23 served.

24 (cf: P.L.1983, c.383, s.15)

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26 7. Section 20 of P.L.1983, c.383 (C.52:27D-211) is amended to
27 read as follows:

28 20. a. Notices, [rules] rulings, decisions and orders required or
29 permitted to be issued and served pursuant to this act shall be served
30 as follows:

31 (1) On the owner:

32 (a) By ordinary or certified mail to the person designated as owner
33 or agent on the certificate of registration, in the municipal tax records,
34 or in the records of the Secretary of State; [however, if the certified
35 mailing is returned, the original letter shall be remailed to the last
36 known address of the person by ordinary mail.]

37 (b) By serving the document on the Secretary of State, who shall
38 be deemed the owner's agent for service of process; except that
39 reasonable efforts have first been made to serve the owner or [his]
40 agent by ordinary or certified mail and that a copy of the document is
41 posted in a conspicuous location on the premises. "Conspicuous
42 location" shall include the walls of the front vestibule or any common
43 foyer or hallway immediately inside the main front entrance[.];

44 (c) By personal delivery of the document to the owner or agent[.];
45 or

46 (d) By leaving the document at the office or dwelling unit of the

1 owner or agent with a person 14 years of age or older.

2 (2) On any other person:

3 (a) By ordinary or certified mail to the person at [his] the person's
4 last known address; [however, if the certified mailing is returned, the
5 original letter shall be remailed to the last known address of the person
6 by ordinary mail.]

7 (b) By personal delivery of the document to the person~~].~~ or

8 (c) By leaving the document at the office or dwelling unit of the
9 person with a person 14 years of age or older.

10 b. The date of personal service or the third day after mailing shall
11 be considered the date of service.

12 (cf: P.L.1983, c.383, s.20)

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14 8. Section 22 of P.L.1986, c.103 (C.52:27D-351) is amended to
15 read as follows:

16 22. If the commissioner determines or has cause to believe that a
17 person has engaged in any act or practice which constitutes a violation
18 of this act, the commissioner may take any or all of the following
19 actions, as appropriate:

20 a. Issue an order requiring the person to cease and desist from
21 engaging in the act or practice;

22 b. Bring an action in a court of competent jurisdiction to enjoin the
23 act or practice and to enforce compliance with this act. Upon a proper
24 showing, the court may grant a permanent or temporary injunction,
25 restraining order or writ of mandamus and may appoint a receiver or
26 conservator for the defendant or the defendant's assets. The
27 commissioner shall not be required to post a bond; or

28 c. Levy and collect civil penalties in the amount of not less than
29 \$250, and not more than \$50,000, for each violation of this act or any
30 rule adopted pursuant thereto, and compromise and settle any claim
31 for a penalty in such amount in the discretion of the commissioner as
32 may appear appropriate and equitable under the circumstances of the
33 violation. Each day during which a violation continues after the
34 effective date of a notice to terminate issued by the commissioner shall
35 constitute an additional, separate and distinct violation. If an
36 administrative order levying a civil penalty is not satisfied within 30
37 days of its issuance, the commissioner may sue for and recover the
38 penalty with costs in a summary proceeding under "the penalty
39 enforcement law" (N.J.S.2A:58-1 et seq.) in the Superior Court.

40 [The commissioner shall promulgate regulations pursuant to the
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
42 seq.), regarding the implementation of subsection c. of this section.]
43 (cf: P.L.1991, c.314, s.1)

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45 9. (New section) Any person aggrieved by any ruling, action,
46 order, or notice of the commissioner pursuant to the "Continuing Care

1 Retirement Community Regulation and Financial Disclosure Act,"
2 P.L.1986, c.103 (C.52:27D-330 et seq.) shall be entitled to a hearing
3 conducted in conformity with the rules and procedures, insofar as they
4 may be applicable, provided for hearings by a State Agency in
5 contested cases under the "Administrative Procedure Act," P.L.1968,
6 c.410 (C.52:14B-1 et seq.). The application for such hearing must be
7 filed with the commissioner within 15 days of the service of notice of
8 the ruling, action, order or notice complained of. The commissioner
9 may extend the 15 day time period to make written application for a
10 hearing for an additional 15 days if, in the commissioner's discretion,
11 the interests of justice shall be served. Pending the determination of
12 the commissioner, and upon application therefor, the commissioner
13 may grant a stay of the ruling, action, order, or notice complained of;
14 provided, that no such stay shall be granted except upon such terms
15 and conditions as will adequately protect the occupants or intended
16 occupants of the continuing care retirement community involved.

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18 10. (New section) Notices, rulings, decisions and orders permitted
19 or required to be served pursuant to the "Continuing Care Retirement
20 Community Regulation and Financial Disclosure Act," P.L.1986, c.103
21 (C.52:27D-330 et seq.) shall be served as follows:

22 a. On the owner:

23 (1) By ordinary or certified mail to the person designated as owner
24 or agent on the construction permit application, in the municipal tax
25 records or in the records of the Secretary of State;

26 (2) By serving the document on the Secretary of State, who shall
27 be deemed the owner's agent for service of process; except that
28 reasonable effort shall have first been made to serve the owner or
29 agent by ordinary mail and that a copy of the document is posted at a
30 conspicuous location on the premises;

31 (3) By personal delivery of the document to the owner or agent; or

32 (4) By leaving the document at the office or dwelling unit of the
33 owner or agent with a person 14 years of age or older.

34 b. On any other person:

35 (1) By ordinary or certified mail to the person at the person's last
36 known address;

37 (2) By personal delivery of the document to the person; or

38 (3) By leaving the document at the office or dwelling unit of the
39 person with a person 14 years of age or older.

40 c. The date of personal service or the third day after mailing shall
41 be considered the date of service.

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43 11. Section 18 of P.L.1967, c.76 (C.55:13A-18) is amended to
44 read as follows:

45 18. Any person aggrieved by any ruling, action, order, or notice of
46 the commissioner pursuant to this act, except any order or notice

1 issued by the commissioner pursuant to sections 12(d), 15(e) and 17
2 of this act, shall be entitled to a hearing [before the commissioner]
3 conducted in conformity with the rules and procedures, insofar as they
4 may be applicable, provided for hearings by a State Agency in
5 contested cases under the "Administrative Procedure Act," P.L.1968,
6 c.410 (C.52:14B-1 et seq.). The application for such hearing must be
7 filed with the commissioner within 15 days of the [receipt by the
8 applicant thereof] service of notice of the ruling, action, order or
9 notice complained of. [No such hearing shall be held except upon 15
10 days' written notice to all interested parties, and each such hearing
11 shall be held within 30 days of the receipt of the application therefor.
12 When a hearing officer is designated by the commissioner to conduct
13 hearings, said hearing officer shall issue a recommended report and
14 decision within 30 days after the completion of any hearing, a copy of
15 which shall be filed with the commissioner and mailed to all parties of
16 record. Each party of record shall be afforded 15 days in which to file
17 exceptions, objections, and replies thereto, and to present argument to
18 the commissioner. Within 15 days thereafter, the commissioner shall
19 issue an order which adopts, rejects, or modifies the recommended
20 report and decision, a copy of which shall be served on all parties of
21 record.] The commissioner may extend the 15 day time period to make
22 written application for hearing for an additional 15 days if, in the
23 commissioner's discretion, the interests of justice shall be served.
24 Pending the determination of the commissioner, and upon application
25 therefor, the commissioner may grant a stay of the ruling, action,
26 order, or notice complained of; provided, that no such stay shall be
27 granted except upon such terms and conditions as will adequately
28 protect the occupants or intended occupants of the hotel or multiple
29 dwelling involved, or the public generally.
30 (cf: P.L.1970, c.138, s.10)

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32 12. Section 20 of P.L.1967, c.76 (C.55:13A-20) is amended to
33 read as follows:

34 20. [(a)]a. Notices [required or permitted to be issued and served
35 pursuant to this act shall be served as follows:

36 (1). On the owner:

37 (i) By mailing same by certified mail, return receipt requested, to
38 the person designated as owner or agent on the certificate of
39 registration or in the municipal tax records or in the records of the
40 Secretary of State.

41 (ii) If the above certified mailing is returned, the original letter shall
42 be remailed to the last known address by common mail.

43 (2). On the occupant:

44 (i) By mailing same by certified mail, return receipt requested, to
45 said occupant, or

46 (ii) If the above certified mailing is returned the original letter shall

1 be mailed to the last known address by common mail.

2 (b) Rules] , Rulings, Decisions and Orders required or permitted
3 to be issued and served pursuant to this act shall be served as follows:

4 (1). On the owner:

5 (i) By mailing same by ordinary or certified mail], return receipt
6 requested,]to the person designated as owner or agent on the
7 certificate [or] of registration or in the municipal tax records or in the
8 records of the Secretary of State[.]; or

9 (ii) By serving same on the Secretary of State, who shall be
10 deemed the owner's agent for service of process, provided however,
11 that reasonable efforts have first been made to serve the owner or [his]
12 agent by ordinary or certified mail or by personal service and that a
13 copy of such notice is posted in a conspicuous location on the
14 premises. "Conspicuous location" shall include the walls of the front
15 vestibule or in any common foyer or hallway immediately inside the
16 main front entrance.

17 (2). On the occupant:

18 (i) By mailing same by ordinary or certified mail], return receipt
19 requested,]addressed to the occupant at the premises[.]; or

20 (ii) By leaving same at the dwelling unit of the occupant with a
21 person of at least the age of 14.

22 [(c)]b. The date of service shall be considered the date of personal
23 service or the date of the third day after mailing, whichever occurs
24 [later] sooner.

25 (cf: P.L.1970, c.138, s.12)

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27 13. Section 12 of P.L.1979, c.496 (C.55:13B-12) is amended to
28 read as follows:

29 12. Notices or orders issued pursuant to this act shall be served
30 upon the owner or operator by posting them by ordinary or certified
31 mail], return receipt requested,]to the owner or operator of a rooming
32 or boarding house or[, if necessary,]by leaving them with the owner
33 or with a person [above] of at least the age of 14 at the owner's
34 dwelling unit or place of business. The date of service shall be
35 considered to be the third day after mailing or [after] the date the
36 notice or order is left at the owner's dwelling unit or place of business.
37 (cf: P.L.1979, c.496, s.12)

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39 14. (New section) Any person aggrieved by any ruling, action,
40 order, or notice of the commissioner pursuant to the "Rooming and
41 Boarding House Act of 1979," P.L.1979, c.496 (C.55:13B-1 et al.),
42 except any order or notice issued by the commissioner pursuant to
43 section 11 of P.L.1979, c.496 (C.55:13B-11), shall be entitled to a
44 hearing conducted in conformity with the rules and procedures, insofar
45 as they may be applicable, provided for hearings a State Agency in
46 contested cases under the "Administrative Procedure Act," P.L.1968,

1 c.410 (C.52:14B-1 et seq.). The application for such hearing must be
2 filed with the commissioner within 15 days of the service of notice of
3 the ruling, action, order or notice complained of. The commissioner
4 may extend the 15 day time period to make written application for a
5 hearing for an additional 15 days if, in the commissioner's discretion,
6 the interests of justice shall be served. Pending the determination of
7 the commissioner, and upon application therefor, the commissioner
8 may grant a stay of the ruling, action, order, or notice complained of;
9 provided, that no such stay shall be granted except upon such terms
10 and conditions as will adequately protect the occupants or intended
11 occupants of the rooming or boarding house involved.

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13 15. This act shall take effect immediately.

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STATEMENT

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18 This bill would allow service of administrative notices and orders
19 under "The Planned Real Estate Development Full Disclosure Act,"
20 P.L.1977, c.419 (C.45:22A-21 et seq.), the "State Uniform
21 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), the
22 "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.),
23 the "Continuing Care Retirement Community Regulation and Financial
24 Disclosure Act," P.L.1986, c.103 (C.52:27D-330 et seq.), the "Hotel
25 and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.), and
26 the "Rooming and Boarding House Act of 1979," P.L.1979, c.496
27 (C.55:13B-1 et al.), to be made by ordinary mail as well as by certified
28 mail. The use of ordinary mail to serve notices and orders, such as
29 motor vehicle license revocation notices, has been recognized by our
30 courts as being not violative of due process. The use of ordinary mail
31 instead of certified mail, return receipt requested, as now required
32 under the acts being amended, would allow substantial cost savings
33 both for the State and for local enforcing agencies. The bill also
34 amends these acts to allow the Department to extend the time period
35 to apply for a hearing to contest a ruling, action, order or notice of the
36 commissioner if, in the commissioner's discretion, the interests of
37 justice would be served.

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42 Allows service of certain notices by ordinary mail; extends time period
43 to apply for certain hearings.