

ASSEMBLY, No. 465

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen ROMA and HOLZAPFEL

1 AN ACT concerning condominium rules and amending P.L.1969,  
2 c.257.

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

6  
7 1. Section 13 of P.L.1969, c.257 (C.46:8B-13) is amended to read  
8 as follows:

9 13. The administration and management of the condominium and  
10 condominium property and the actions of the association shall be  
11 governed by bylaws which shall initially be recorded with the master  
12 deed and shall provide, in addition to any other lawful provisions, for  
13 the following:

14 (a) The form of administration, indicating the titles of the officers  
15 and governing board of the association, if any, and specifying the  
16 powers, duties and manner of selection, removal and compensation, if  
17 any, of officers and board members. If the bylaws provide that any of  
18 the powers and duties of the association as set forth in sections 14 and  
19 15 of P.L.1969, c.257 (C.46:8B-14 and 46:8B-15) be exercised  
20 through a governing board elected by the membership of the  
21 association, or through officers of the association responsible to and  
22 under the direction of such a governing board, all meetings of that  
23 governing board, except conference or working sessions at which no  
24 binding votes are to be taken, shall be open to attendance by all unit  
25 owners, and adequate notice of any such meeting shall be given to all  
26 unit owners in such manner as the bylaws shall prescribe; except that  
27 the governing board may exclude or restrict attendance at those  
28 meetings, or portions of meetings, dealing with (1) any matter the  
29 disclosure of which would constitute an unwarranted invasion of  
30 individual privacy; (2) any pending or anticipated litigation or contract  
31 negotiations; (3) any matters falling within the attorney-client  
32 privilege, to the extent that confidentiality is required in order for the

**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 attorney to exercise his ethical duties as a lawyer, or (4) any matter  
2 involving the employment, promotion, discipline or dismissal of a  
3 specific officer or employee of the association. At each meeting  
4 required under this subsection to be open to all unit owners, minutes  
5 of the proceedings shall be taken, and copies of those minutes shall be  
6 made available to all unit owners before the next open meeting.

7 (b) The method of calling meetings of unit owners, the percentage  
8 of unit owners or voting rights required to make decisions and to  
9 constitute a quorum, but such bylaws may nevertheless provide that  
10 unit owners may waive notice of meetings or may act by written  
11 agreement without meetings.

12 (c) The manner of collecting from unit owners their respective  
13 shares of common expenses and the method of distribution to the unit  
14 owners of their respective shares of common surplus or such other  
15 application of common surplus as may be duly authorized by the  
16 bylaws.

17 (d) The method by which the bylaws may be amended, provided  
18 that no amendment shall be effective until recorded in the same office  
19 as the then existing bylaws. The bylaws may also provide a method  
20 for the adoption, amendment and enforcement of reasonable  
21 administrative rules and regulations, including the imposition of fines  
22 and late fees which may be enforced as a lien pursuant to section 21  
23 of P.L.1969, c.257 (C.46:8B-21) relating to the operation, use,  
24 maintenance and enjoyment of the units and of the common elements  
25 including limited common elements.

26 (cf: P.L.1991, c.48, s.1)

27

28 2. Section 14 of P.L.1969, c.257 (C.46:8B-14) is amended to read  
29 as follows:

30 14. The association, acting through its officers or governing board,  
31 shall be responsible for the performance of the following duties, the  
32 costs of which shall be common expenses:

33 (a) The maintenance, repair, replacement, cleaning and sanitation  
34 of the common elements.

35 (b) The assessment and collection of funds for common expenses  
36 and the payment thereof.

37 (c) The adoption, distribution, amendment and enforcement of rules  
38 governing the use and operation of the condominium and the  
39 condominium property and the use of the common elements, including  
40 but not limited to the imposition of reasonable fines, assessments and  
41 late fees upon unit owners, if authorized by the master deed or bylaws,  
42 subject to the right of a majority of unit owners to change any such  
43 rules.

44 (d) The maintenance of insurance against loss by fire or other  
45 casualties normally covered under broad-form fire and extended  
46 coverage insurance policies as written in this State, covering all

1 common elements and all structural portions of the condominium  
2 property and the application of the proceeds of any such insurance to  
3 restoration of such common elements and structural portions if such  
4 restoration shall otherwise be required under the provisions of this act  
5 or the master deed or bylaws.

6 (e) The maintenance of insurance against liability for personal injury  
7 and death for accidents occurring within the common elements,  
8 whether limited or general, and the defense of any actions brought by  
9 reason of injury or death to person, or damage to property, occurring  
10 within such common elements and not arising by reason of any act or  
11 negligence of any individual unit owner.

12 (f) The master deed or by-laws may require the association to  
13 protect blanket mortgages, or unit owners and their mortgagees, as  
14 their respective interest may appear, under the policies of insurance  
15 provided under clauses (d) and (e) of this section, or against such  
16 risks with respect to any or all units, and may permit the assessment  
17 and collection from a unit owner of specific charges for insurance  
18 coverage applicable to his unit.

19 (g) The maintenance of accounting records, in accordance with  
20 generally accepted accounting principles, open to inspection at  
21 reasonable times by unit owners. Such records shall include:

22 (i) A record of all receipts and expenditures.

23 (ii) An account for each unit setting forth any shares of common  
24 expenses or other charges due, the due dates thereof, the present  
25 balance due, and any interest in common surplus.

26 (h) Nothing herein shall preclude any unit owner or other person  
27 having an insurable interest from obtaining insurance at his own  
28 expense and for his own benefit against any risk, whether or not  
29 covered by insurance maintained by the association.

30 (i) Such other duties as may be set forth in the master deed or  
31 by-laws.

32 (j) An association shall exercise its powers and discharge its  
33 functions in a manner that protects and furthers or is not inconsistent  
34 with the health, safety and general welfare of the residents of the  
35 community.

36 (k) An association shall provide a fair and efficient procedure for  
37 the resolution of housing-related disputes between individual unit  
38 owners and the association, and between unit owners which shall be  
39 readily available as an alternative to litigation. A person other than an  
40 officer of the association, a member of the governing board or a unit  
41 owner involved in the dispute shall be made available to resolve the  
42 dispute. A unit owner may notify the Commissioner of Community  
43 Affairs if an association does not comply with this subsection. The  
44 commissioner shall have the power to order the association to provide  
45 a fair and efficient procedure for the resolution of disputes.

46 (cf: P.L.1969, c.257, s.14)

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

3       15. Subject to the provisions of the master deed, the by-laws, rules  
4 and regulations and the provisions of this act or other applicable law,  
5 the association shall have the following powers:

6       (a) Whether or not incorporated, the association shall be an entity  
7 which shall act through its officers and may enter into contracts, bring  
8 suit and be sued. If the association is not incorporated, it may be  
9 deemed to be an entity existing pursuant to this act and a majority of  
10 the members of the governing board or of the association, as the case  
11 may be, shall constitute a quorum for the transaction of business.  
12 Process may be served upon the association by serving any officer of  
13 the association or by serving the agent designated for service of  
14 process. Service of process upon the association shall not constitute  
15 service of process upon any individual unit owner.

16       (b) The association shall have access to each unit from time to time  
17 during reasonable hours as may be necessary for the maintenance,  
18 repair or replacement of any common elements therein or accessible  
19 therefrom or for making emergency repairs necessary to prevent  
20 damage to common elements or to any other unit or units. The  
21 association may charge the unit owner for the repair of any common  
22 element damaged by the unit owner or his tenant.

23       (c) The association may purchase units in the condominium and  
24 otherwise acquire, hold, lease, mortgage and convey the same. It may  
25 also lease or license the use of common elements in a manner not  
26 inconsistent with the rights of unit owners.

27       (d) The association may acquire or enter into agreements whereby  
28 it acquires leaseholds, memberships or other possessory or use  
29 interests in lands or facilities including, but not limited to country  
30 clubs, golf courses, marinas and other recreational facilities, whether  
31 or not contiguous to the condominium property, intended to provide  
32 for the enjoyment, recreation or other use or benefit of the unit  
33 owners. If fully described in the master deed or by-laws, the fees,  
34 costs and expenses of acquiring, maintaining, operating, repairing and  
35 replacing any such memberships, interests and facilities shall be  
36 common expenses. If not so described in the master deed or by-laws  
37 as originally recorded, no such membership interest or facility shall be  
38 acquired except pursuant to amendment of or supplement to the  
39 master deed or by-laws duly adopted as provided therein and in this  
40 act. In the absence of such amendment or supplement, if some but not  
41 all unit owners desire any such acquisition and agree to assume among  
42 themselves all costs of acquisition, maintenance, operation, repair and  
43 replacement thereof, the association may acquire or enter into an  
44 agreement to acquire the same as limited common elements  
45 appurtenant only to the units of those unit owners who have agreed to  
46 bear the costs and expenses thereof. Such costs and expenses shall be

1 assessed against and collected from the agreeing unit owners in the  
2 proportions in which they share as among themselves in the common  
3 expenses in the absence of some other unanimous agreement among  
4 themselves. No other unit owner shall be charged with any such cost  
5 or expense; provided, however, that nothing herein shall preclude the  
6 extension of the interests in such limited common elements to  
7 additional unit owners by subsequent agreement with all those unit  
8 owners then having an interest in such limited common elements.

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

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

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

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

30 (cf: P.L.1969, c.257, s.15)

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32 4. Section 16 of P.L.1969, c.257 (C.46:8B-16) is amended to read  
33 as follows:

34 16. (a) No unit owner, except as an officer of the association, shall  
35 have any authority to act for or bind the association. An association,  
36 however, may assert tort claims concerning the common elements and  
37 facilities of the development as if the claims were asserted directly by  
38 the unit owners individually.

39 (b) Failure to comply with the by-laws and the rules and  
40 regulations governing the details of the use and operation of the  
41 condominium, the condominium property and the common elements,  
42 and the quality of life therein, in effect from time to time, and with the  
43 covenants, conditions and restrictions set forth in the master deed or  
44 in deeds of units, shall be grounds for reasonable fines and assessments  
45 upon unit owners maintainable by the association, or for an action for  
46 the recovery of damages [or], for injunctive relief, or [both] for a

1 combination thereof, maintainable by the association or by any other  
2 unit owner or by any person who holds a blanket mortgage or a  
3 mortgage lien upon a unit and is aggrieved by any such  
4 noncompliance.

5 (c) A unit owner shall have no personal liability for any damages  
6 caused by the association or in connection with the use of the common  
7 elements. A unit owner shall be liable for injuries or damages resulting  
8 from an accident in his own unit in the same manner and to the same  
9 extent as the owner of any other real estate.

10 (d) A unit owner may notify the Commissioner of Community  
11 Affairs upon the failure of an association to comply with requests  
12 made under subsection (g) of section 14 of P.L.1969, c.257  
13 (C.46:8B-14) by unit owners to inspect at reasonable times the  
14 accounting records of the association. Upon investigation, the  
15 commissioner shall have the power to order the compliance of the  
16 association with such a request.

17 (cf: P.L.1969, c.257, s.16)

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19 5. Section 21 of P.L.1969, c.257 (C.46:8B-21) is amended to read  
20 as follows:

21 21. The association shall have a lien on each unit for any unpaid  
22 assessment duly made by the association for a share of common  
23 expenses or otherwise, including any other moneys duly owed the  
24 association, upon proper notice to the appropriate unit owner,  
25 together with interest thereon and, if authorized by the master deed or  
26 by-laws, late fees, fines and reasonable attorney's fees; provided  
27 however that an association shall not record a lien in which the unpaid  
28 assessment consists solely of late fees. Such lien shall be effective  
29 from and after the time of recording in the public records of the county  
30 in which the unit is located of a claim of lien stating the description of  
31 the unit, the name of the record owner, the amount due and the date  
32 when due. Such claim of lien shall include only sums which are due  
33 and payable when the claim of lien is recorded and shall be signed and  
34 verified by an officer or agent of the association. Upon full payment  
35 of all sums secured by the lien, the party making payment shall be  
36 entitled to a recordable satisfaction of lien. All such liens shall be  
37 subordinate to any lien for past due and unpaid taxes, the lien of any  
38 mortgage to which the unit is subject and to any other lien recorded  
39 prior to the time of recording of the claim of lien.

40 Upon any voluntary conveyance of a unit, the grantor and grantee  
41 of such unit shall be jointly and severally liable for all unpaid  
42 assessments pertaining to such unit duly made by the association or  
43 accrued up to the date of such conveyance without prejudice to the  
44 right of the grantee to recover from the grantor any amounts paid by  
45 the grantee, but the grantee shall be exclusively liable for those  
46 accruing while he is the unit owner.

1 Any unit owner or any purchaser of a unit prior to completion of a  
2 voluntary sale may require from the association a certificate showing  
3 the amount of unpaid assessments pertaining to such unit and the  
4 association shall provide such certificate within 10 days after request  
5 therefor. The holder of a mortgage or other lien on any unit may  
6 request a similar certificate with respect to such unit. Any person  
7 other than the unit owner at the time of issuance of any such certificate  
8 who relies upon such certificate shall be entitled to rely thereon and his  
9 liability shall be limited to the amounts set forth in such certificate.

10 If a mortgagee of a first mortgage of record or other purchaser of  
11 a unit obtains title to such unit as a result of foreclosure of the first  
12 mortgage, such acquirer of title, his successors and assigns shall not  
13 be liable for the share of common expenses or other assessments by  
14 the association pertaining to such unit or chargeable to the former unit  
15 owner which became due prior to acquisition of title as a result of the  
16 foreclosure. [Such] Any remaining unpaid share of common expenses  
17 and other assessments, except assessments derived from late fees or  
18 finer, shall be deemed to be common expenses collectible from all of  
19 the remaining unit owners including such acquirer, his successors and  
20 assigns.

21 Liens for unpaid assessments may be foreclosed by suit brought in  
22 the name of the association in the same manner as a foreclosure of a  
23 mortgage on real property. The association shall have the power,  
24 unless prohibited by the master deed or by-laws to bid [in] on the unit  
25 at foreclosure sale, and to acquire, hold, lease, mortgage and convey  
26 the same. Suit to recover a money judgment for unpaid assessments  
27 may be maintained without waiving the lien securing the same.  
28 (cf: P.L.1969, c.257, s.21)

29

30 6. (New section) Any bylaws provision providing for the  
31 imposition of reasonable fines and late fees that was adopted prior to  
32 the effective date of and which is not inconsistent with the provisions  
33 of P.L. , c. (C. )(pending before the Legislature as this bill) and  
34 any fine levied by a condominium association against a unit owner in  
35 accordance with its bylaws prior to the effective date of P.L. , c.  
36 (C. )(pending before the Legislature as this bill) is hereby validated.

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38 7. This act shall take effect immediately.

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#### STATEMENT

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43 This bill provides statutory authority for provisions found in  
44 condominium association master deeds and bylaws that allow for the  
45 imposition of reasonable fines on unit owners who fail to comply with  
46 the master deed, bylaws, or rules and regulations of the condominium.

1 The bill also specifically indicates that condominium associations may  
2 include provisions in their master deeds or by-laws for the imposition  
3 of late fees upon unit owners who fail to pay monies duly owed the  
4 association after proper notice. Furthermore, the bill provides that  
5 by-laws may provide for rules including the imposition of fines and late  
6 fees which may be enforced as a lien pursuant to section 21 of  
7 P.L.1969, c.257 (C.46:8B-21). However, an association will not be  
8 permitted under the bill to file a lien consisting solely of late fees.  
9 The bill specifically validates bylaw provisions that provided for the  
10 imposition of reasonable fines and late fees that were adopted prior to  
11 the bill's effective date so long as those provisions are not inconsistent  
12 with the provisions of the bill and the bill also validates fines levied  
13 pursuant to such bylaw provisions.

14 This bill is in response to the decision rendered in Walker v.  
15 Briarwood Condo Ass'n., 274 N.J. Super. 422 (App. Div. 1994) which  
16 held that the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.)  
17 does not empower condominium associations to enforce their rules and  
18 regulations by imposing fines or enforcing fines imposed on unit  
19 owners by the placement of liens on units. In Holbert v. Great Gorge  
20 Village, 281 N.J. Super. 222 (Ch. Div. 1994), the court followed the  
21 decision in Walker by finding that a condominium association  
22 exceeded statutory authority by charging a unit owner late fees.

23 The bill circumscribes the discretion of condominium associations  
24 that wish to provide for the imposition of fines in their governing  
25 documents by setting forth the following guidelines:

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

34 In order to forestall future court decisions from holding that actions  
35 of condominium associations exceed statutory authority, the bill  
36 provides associations with such other powers as may be set forth in the  
37 master deed or bylaws, if not prohibited by the "Condominium Act,"  
38 P.L.1969, c.257 (C.46:8B-1 et seq.), or any other law of this State.

39 The bill also amends the "Condominium Act" to specify that it is a  
40 duty of condominium associations to exercise their powers and  
41 discharge their functions in a manner that protects and furthers and is  
42 not inconsistent with the health, safety and general welfare of the  
43 residents of the community.

44 The bill also requires condominium associations to provide a fair  
45 and efficient procedure for the resolution of housing-related disputes  
46 between individual unit owners and the association, and between unit  
47 owners, which is to be readily available as an alternative to litigation.

1 The bill specifies that a person other than an officer of the association,  
2 a member of the governing board or a unit owner involved in the  
3 dispute must be made available to resolve the dispute. The bill allows  
4 a unit owner to notify the Commissioner of Community Affairs if an  
5 association does not provide a dispute resolution procedure. The bill  
6 empowers the commissioner to order an association to provide a fair  
7 and efficient procedure for the resolution of disputes.

8 In addition, the bill provides that a unit owner may notify the  
9 Commissioner of Community Affairs upon the failure of an association  
10 to comply with requests made under subsection (g) of section 14 of  
11 P.L.1969, c.257 (C.46:8B-14) to inspect at reasonable times the  
12 accounting records of the association. Upon investigation, the  
13 commissioner would have the power to order the association to  
14 comply with such a request.

15 Finally, the bill provides that a condominium association may assert  
16 tort claims concerning common elements and facilities of the  
17 development as if the claims were asserted directly by the unit owners  
18 individually.

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23 Clarifies methods for condominium associations to enforce rules and  
24 collect assessments.