

[Second Reprint]
ASSEMBLY, No. 465

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ROMA, Assemblywoman WRIGHT,
Assemblyman Holzapfel and Assemblywoman Heck

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHO committee amendments adopted February 5, 1996.

² Senate floor amendments adopted May 30, 1996.

1 negotiations; (3) any matters falling within the attorney-client
2 privilege, to the extent that confidentiality is required in order for the
3 attorney to exercise his ethical duties as a lawyer, or (4) any matter
4 involving the employment, promotion, discipline or dismissal of a
5 specific officer or employee of the association. At each meeting
6 required under this subsection to be open to all unit owners, minutes
7 of the proceedings shall be taken, and copies of those minutes shall be
8 made available to all unit owners before the next open meeting.

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

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

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

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

29

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

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

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

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

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

46 (d) The maintenance of insurance against loss by fire or other

1 casualties normally covered under broad-form fire and extended
2 coverage insurance policies as written in this State, covering all
3 common elements and all structural portions of the condominium
4 property and the application of the proceeds of any such insurance to
5 restoration of such common elements and structural portions if such
6 restoration shall otherwise be required under the provisions of this act
7 or the master deed or bylaws.

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

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

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

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

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

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

32 (i) Such other duties as may be set forth in the master deed or
33 bylaws.

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

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

1 a fair and efficient procedure for the resolution of disputes.
2 (cf: P.L.1995, c.313, s.1)

3

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

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

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

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

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

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

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

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

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

22 ²A fine for a violation or a continuing violation of the master deed,
23 bylaws or rules and regulations shall not exceed the maximum
24 monetary penalty permitted to be imposed for a violation or a
25 continuing violation under section 19 of the "Hotel and Multiple
26 Dwelling Law," P.L.1967, c.76 (C.55:13A-19).²

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

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

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

39

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

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

1 (b) Failure to comply with the by-laws and the rules and
2 regulations governing the details of the use and operation of the
3 condominium, the condominium property and the common elements,
4 and the quality of life therein, in effect from time to time, and with the
5 covenants, conditions and restrictions set forth in the master deed or
6 in deeds of units, shall be grounds for reasonable fines and assessments
7 upon unit owners maintainable by the association, or for an action for
8 the recovery of damages [or], for injunctive relief, or [both] for a
9 combination thereof, maintainable by the association or by any other
10 unit owner or by any person who holds a blanket mortgage or a
11 mortgage lien upon a unit and is aggrieved by any such
12 noncompliance.

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

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

25 (cf: P.L.1995, c.313, s.2)

26

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

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

1 mortgage to which the unit is subject and to any other lien recorded
2 prior to the time of recording of the claim of lien.

3 b. A lien recorded pursuant to subsection a. of this section shall
4 have a limited priority over prior recorded mortgages and other liens,
5 other than liens for unpaid property taxes or federal taxes, to the
6 extent provided in this subsection. This priority shall be limited as
7 follows:

8 (1) To a lien which is the result of customary condominium
9 assessments as defined herein, the amount of which shall not exceed
10 the aggregate customary condominium assessment against the unit
11 owner for the six month period prior to the recording of the lien;

12 (2) With respect to a particular mortgage, to a lien recorded prior
13 to: (a) the receipt by the association of a summons and complaint
14 in an action to foreclose a mortgage on that unit; or (b) the filing
15 with the proper county recording office of a lis pendens giving notice
16 of an action to foreclose a mortgage on that unit.

17 (3) In the case of more than one association lien being filed, either
18 because an association files more than one lien or multiple
19 associations have filed liens, the total amount of the liens granted
20 priority shall not be greater than the assessment for the six month
21 period specified in paragraph 1 of this subsection. Priority among
22 multiple filings shall be determined by their date of recording with the
23 earlier recorded liens having first use of the priority given herein.

24 (4) The priority granted to a lien pursuant to this subsection shall
25 expire on the first day of the 60th month following the date of
26 recording of an association's lien.

27 (5) A lien of an association shall not be granted priority over a
28 prior recorded mortgage or mortgages under this subsection if a prior
29 recorded lien of the association for unpaid assessments has obtained
30 priority over the same recorded mortgage or mortgages as provided
31 in this subsection, for a period of 60 months from the date of
32 recording of the lien granted priority.

33 (6) When recording a lien which may be granted priority pursuant
34 to this act, an association shall notify, in writing, any holder of a first
35 mortgage lien on the property of the filing of the association lien. An
36 association which exercises a good faith effort but is unable to
37 ascertain the identity of a holder of a prior recorded mortgage on the
38 property will be deemed to be in substantial compliance with this
39 paragraph.

40 For the purpose of this section, a "customary condominium
41 assessment" shall mean an assessment for periodic payments, due the
42 association for regular and usual operating and common area
43 expenses pursuant to the association's annual budget and shall not
44 include amounts for reserves for contingencies, nor shall it include any
45 late charges, penalties, interest or any fees or costs for the collection
46 or enforcement of the assessment or any lien arising from the

1 assessment. The periodic payments due must be due monthly, or no
2 less frequently than quarter-yearly, as may be acceptable to the
3 Federal National Mortgage Association so as not to disqualify an
4 otherwise superior mortgage on the condominium from purchase by
5 the Federal National Mortgage Association as a first mortgage.

6 c. Upon any voluntary conveyance of a unit, the grantor and
7 grantee of such unit shall be jointly and severally liable for all unpaid
8 assessments pertaining to such unit duly made by the association or
9 accrued up to the date of such conveyance without prejudice to the
10 right of the grantee to recover from the grantor any amounts paid by
11 the grantee, but the grantee shall be exclusively liable for those
12 accruing while he is the unit owner.

13 d. Any unit owner or any purchaser of a unit prior to completion
14 of a voluntary sale may require from the association a certificate
15 showing the amount of unpaid assessments pertaining to such unit and
16 the association shall provide such certificate within 10 days after
17 request therefor. The holder of a mortgage or other lien on any unit
18 may request a similar certificate with respect to such unit. Any
19 person other than the unit owner at the time of issuance of any such
20 certificate who relies upon such certificate shall be entitled to rely
21 thereon and his liability shall be limited to the amounts set forth in
22 such certificate.

23 e. If a mortgagee of a first mortgage of record or other purchaser
24 of a unit obtains title to such unit as a result of foreclosure of the first
25 mortgage, such acquirer of title, his successors and assigns shall not
26 be liable for the share of common expenses or other assessments by
27 the association pertaining to such unit or chargeable to the former
28 unit owner which became due prior to acquisition of title as a result
29 of the foreclosure. **[Such]** Any remaining unpaid share of common
30 expenses and other assessments, except assessments derived from late
31 fees or fines, shall be deemed to be common expenses collectible from
32 all of the remaining unit owners including such acquirer, his
33 successors and assigns.

34 f. Liens for unpaid assessments may be foreclosed by suit brought
35 in the name of the association in the same manner as a foreclosure of
36 a mortgage on real property. The association shall have the power,
37 unless prohibited by the master deed or by-laws to bid **[in]** on the unit
38 at foreclosure sale, and to acquire, hold, lease, mortgage and convey
39 the same. Suit to recover a money judgment for unpaid assessments
40 may be maintained without waiving the lien securing the same.

41 (cf: P.L.1995, c.354, s.4)

42

43 6. (New section) Any bylaws provision providing for the
44 imposition of reasonable fines and late fees that was adopted prior to
45 the effective date of and which is not inconsistent with the provisions
46 of P.L. , c. (C.)(pending before the Legislature as this bill) and

1 any fine levied by a condominium association against a unit owner in
2 accordance with its bylaws prior to the effective date of P.L. , c.
3 (C.)(pending before the Legislature as this bill) is hereby validated
4 ¹:provided, however, that this section shall not be applicable to any
5 case in which a judicial determination relative to the legality of any
6 such fine has been rendered on or before the effective date of this act¹.

7

8 7. This act shall take effect immediately.

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13 Clarifies methods for condominium associations to enforce rules and
14 collect assessments.