

## SENATE, No. 575

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# STATE OF NEW JERSEY

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INTRODUCED JANUARY 29, 1996

By Senator SINAGRA

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

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

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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  
33   attorney to exercise his ethical duties as a lawyer, or (4) any matter  
34   involving the employment, promotion, discipline or dismissal of a

**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 specific officer or employee of the association. At each meeting  
2 required under this subsection to be open to all unit owners, minutes  
3 of the proceedings shall be taken, and copies of those minutes shall be  
4 made available to all unit owners before the next open meeting.

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

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

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

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

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

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

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

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

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

42 (d) The maintenance of insurance against loss by fire or other  
43 casualties normally covered under broad-form fire and extended  
44 coverage insurance policies as written in this State, covering all  
45 common elements and all structural portions of the condominium  
46 property and the application of the proceeds of any such insurance to

1 restoration of such common elements and structural portions if such  
2 restoration shall otherwise be required under the provisions of this act  
3 or the master deed or bylaws.

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

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

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

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

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

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

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

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

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

44 (cf: P.L.1995, c.313, s.1)

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

1 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 unit owner or by any person who holds a blanket mortgage or a  
2 mortgage lien upon a unit and is aggrieved by any such  
3 noncompliance.

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

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

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

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

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

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

46 Any unit owner or any purchaser of a unit prior to completion of a

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

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

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

27 (cf: P.L.1969, c.257, s.21)

28

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

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37 7. This act shall take effect immediately.

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40 STATEMENT

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42 This bill would provide statutory authority for provisions found in  
43 condominium association master deeds and by-laws that allow for the  
44 imposition of reasonable fines on unit owners who fail to comply with  
45 the master deed, by-laws, or rules and regulations of the condominium.  
46 The bill also specifically indicates that condominium associations may

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

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

22 The bill would circumscribe the discretion of condominium  
23 associations that wish to provide for the imposition of fines in their  
24 governing documents, except that a fine shall not be imposed unless  
25 the unit owner is given written notice of the action taken and of the  
26 alleged basis for the action, and is advised of the right to participate  
27 in a dispute resolution procedure in accordance with subsection (k) of  
28 section 14 of P.L.1969, c.257 (C.46:8B-14). A unit owner who does  
29 not 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 In order to forestall future court decisions from holding that actions  
33 of condominium associations exceed statutory authority, the bill would  
34 provide associations with such other powers as may be set forth in the  
35 master deed or by-laws, if not prohibited by the "Condominium Act,"  
36 P.L.1969, c.257 (C.46:8B-1 et seq.), or any other law of this State.

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

42 Finally, the bill would provide that if a mortgagee of a first  
43 mortgage of record or other purchaser of a unit obtains title to the unit  
44 as a result of foreclosure of the first mortgage, the acquirer of the title,  
45 his successors and assigns shall not be liable for the share of common  
46 expenses or other assessments by the association pertaining to the unit

1 or chargeable to the former unit owner which became due prior to  
2 acquisition of title as a result of the foreclosure.

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7 Clarifies methods for condominium associations to enforce rules and  
8 collect assessments.