

# SENATE COMMUNITY AFFAIRS COMMITTEE

## STATEMENT TO

### **SENATE, No. 575**

with committee amendments

# STATE OF NEW JERSEY

DATED: MAY 2, 1996

The Senate Community Affairs Committee reports favorably Senate Bill No. 575 with committee amendments.

This bill, as amended by the committee, would provide statutory authority for provisions found in condominium association master deeds and by-laws that allow for the imposition of reasonable fines on unit owners who fail to comply with the master deed, by-laws, or rules and regulations of the condominium. The amended bill also specifically indicates that condominium associations may include provisions in their master deeds or by-laws for the imposition of late fees upon unit owners who fail to pay monies duly owed the association after proper notice. Furthermore, the amended bill provides that by-laws may provide for rules 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), except that an unpaid assessment consisting solely of late fees may not be the basis for recordation of a lien.

Section 6 of the amended bill would specifically validate by-law provisions that provided for the imposition of reasonable fines and late fees that were adopted prior to the bill's effective date so long as those provisions are not inconsistent with the provisions of the bill and would also validate fines levied pursuant to such by-law provisions. However, section 6 would not be applicable to any case in which a judicial determination relative to the legality of any such fine has been rendered on or before the date this bill takes effect.

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

The amended bill would prohibit imposition of a fine unless the unit owner is given written notice of the action taken and of the alleged basis for the action, and is advised of the right to participate in a dispute resolution procedure in accordance with subsection (k) of section 14 of P.L.1969, c.257 (C.46:8B-14). A unit owner who does not believe that the dispute resolution procedure has satisfactorily resolved the matter may seek a judicial remedy in a court of competent jurisdiction.

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

The committee adopted technical amendments to conform section 5 of the bill to current law.

The committee also adopted an amendment to section 6 of the bill in order to place a limitation upon the validating provision of that section so that a preexisting fine would not be validated in any case in which a judicial determination relative to the legality of the fine was rendered prior to the date that this bill takes effect.

With these amendments this bill is identical to Assembly Bill No. 465 (1R) which was also favorably reported by the committee on May 2, 1996.