

ASSEMBLY, No. 4265

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 15, 2020

Sponsored by:
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington)

SYNOPSIS

Revises law relating to common interest communities.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning common interest communities, supplementing
2 Title 46 of the Revised Statutes, and repealing various parts of
3 the statutory law.

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

7
8 1. An additional chapter, chapter 8E, is added to Title 46 of the
9 Revised Statutes as follows:

10
11 TITLE 46
12 CHAPTER 8E
13 ARTICLE 1
14 DEFINITIONS AND GENERAL PROVISIONS
15

16 46:8E-1. Short title.

17 This chapter shall be known and may be cited as the “New Jersey
18 Common Interest Ownership Act.”

19
20 46:8E-2. Definitions.

21 As used in this chapter:

22 “Allocated interests” means the following interests allocated
23 to each unit:

24 a. in a condominium, the undivided interest in the common
25 elements, the common expense liability, and votes in the
26 association;

27 b. in a cooperative, the common expense liability, the
28 ownership interest, and votes in the association; and

29 c. in a planned community, the common expense liability and
30 votes in the association.

31 “Assessment” means the sum attributable to each unit and due to
32 the association for common expenses.

33 “Association” or “unit owners association” means the entity
34 responsible for the administration of a common interest community,
35 which entity may be incorporated or unincorporated.

36 “Bylaws” means the instruments, however denominated, that
37 contain the procedures for conduct of the affairs of the association
38 regardless of the form in which the association is organized,
39 including any amendments to the instruments.

40 “Common elements” means:

41 a. in the case of:

42 (1) a condominium or cooperative, all portions of the common
43 interest community other than the units; and

44 (2) a planned community, any real estate within a planned
45 community which is owned or leased by the association, other than
46 a unit; and

1 b. in all common interest communities, any other interests in
2 real estate for the benefit of unit owners which are subject to the
3 declaration.

4 “Common expense liability” means the liability for common
5 expenses allocated to each unit pursuant N.J.S.46:8E-20.

6 “Common expenses” means expenditures made by, or financial
7 liabilities of, the association, together with any allocations to
8 reserves.

9 “Common interest community” means real estate described in a
10 declaration with respect to which a person is obligated by virtue of
11 unit ownership to pay for a share of:

12 a. real estate taxes;

13 b. insurance premiums;

14 c. maintenance; or

15 d. improvement of, or services or other expenses related to,
16 common elements, other units, or other real estate described in the
17 declaration.

18 Common interest community includes condominiums,
19 cooperatives, and any other real estate development composed of
20 individually owned property units and common property jointly
21 owned and managed by the unit owners as an association.

22 “Condominium” means a common interest community in which
23 portions of the real estate are designated for separate ownership and
24 the remainder of the real estate is designated for common ownership
25 solely by the owners of those portions. A common interest
26 community is not a condominium unless the undivided interests in
27 the common elements are vested in the unit owners.

28 “Cooperative” means a common interest community in which the
29 real estate is owned by an association, each member of which is
30 entitled by virtue of the member’s ownership interest in the
31 association to exclusive possession of a unit.

32 “Dealer” means a person in the business of selling units for the
33 person’s own account.

34 “Declarant” means any person or group of persons acting in
35 concert that:

36 a. as part of a common promotional plan, offers to dispose of
37 the interest of the person or group of persons in a unit not
38 previously disposed of;

39 b. reserves or succeeds to any special declarant right; or

40 c. applies for registration of a common interest community.

41 “Declaration” means the instrument, however denominated, that
42 creates a common interest community, including any amendments
43 to the instrument.

44 “Development rights” means any right or combination of rights
45 reserved by a declarant in the declaration to:

46 a. add real estate to a common interest community;

47 b. create units, common elements, or limited common elements
48 within a common interest community;

1 c. subdivide units or convert units into common elements; or

2 d. withdraw real estate from a common interest community.

3 “Dispose” means a voluntary transfer to a purchaser of any legal
4 or equitable interest in a unit, but the term does not include the
5 transfer or release of a security interest.

6 “Executive board” means the body, regardless of name,
7 designated in the declaration or bylaws to act on behalf of the
8 association.

9 “Identifying number” means a symbol or address that identifies
10 only one unit in a common interest community.

11 “Leasehold common interest community” means a common
12 interest community in which all or a portion of the real estate is
13 subject to a lease the expiration or termination of which will
14 terminate the common interest community or reduce its size.

15 “Limited common element” means a portion of the common
16 elements allocated by the declaration or by operation of subsections
17 b. or d. of N.J.S.46:8E-15 for the exclusive use of one or more but
18 fewer than all of the units.

19 “Master association” means an organization described in
20 N.J.S.46:8E-33.

21 “Offering” means an advertisement, inducement, solicitation, or
22 attempt to encourage a person to acquire an interest in a unit, other
23 than as security for an obligation. An advertisement in a newspaper
24 or other periodical of general circulation, or in a broadcast medium
25 to the general public, of a common interest community not located
26 in this State, is not an offering under this chapter if the
27 advertisement states that it is made in compliance with the law of
28 the jurisdiction in which the common interest community is located.

29 “Person” means an individual, corporation, business trust, estate,
30 trust, partnership, limited liability company, association, joint
31 venture, public corporation, government or governmental
32 subdivision, agency, or instrumentality, or any other legal or
33 commercial entity.

34 “Planned community” means a common interest community that
35 is not a condominium or a cooperative. A condominium or
36 cooperative may be part of a planned community.

37 “Proprietary lease” means an agreement with the association
38 pursuant to which a member is entitled to exclusive possession of a
39 unit in a cooperative.

40 “Purchaser” means a person, other than a declarant or a dealer,
41 who by means of a voluntary transfer acquires a legal or equitable
42 interest in a unit other than:

43 a. a leasehold interest, including renewal options, of less than
44 20 years; or

45 b. as security for an obligation.

46 “Real estate” means any leasehold or other estate or interest in,
47 over, or under land, including structures, fixtures, and other
48 improvements and interests that by custom, usage, or law pass with

1 a conveyance of land though not described in the contract of sale or
2 instrument of conveyance. The term includes parcels with or
3 without upper or lower boundaries and spaces that may be filled
4 with air or water.

5 “Record”, when used as a noun, means information that is
6 inscribed on a tangible medium or that is stored in an electronic or
7 other medium and is retrievable in perceivable form.

8 “Residential purposes” means use for dwelling purposes,
9 recreational purposes, or both.

10 “Rule” means a policy, guideline, restriction, procedure, or
11 regulation of an association, however denominated, which is not set
12 forth in the declaration or bylaws and which governs the conduct of
13 persons or the use or appearance of property.

14 “Security interest” means an interest in real estate or personal
15 property, created by contract or conveyance, which secures payment
16 or performance of an obligation. The term includes a lien created
17 by a mortgage, deed of trust, trust deed, security deed, contract for
18 deed, land sales contract, lease intended as security, assignment of
19 lease or rents intended as security, pledge of an ownership interest
20 in an association, and any other consensual lien or title retention
21 contract intended as security for an obligation.

22 “Special declarant rights” means rights reserved for the benefit
23 of a declarant to:

24 a. complete improvements indicated on plats and plans filed
25 with the declaration or, in a cooperative, to complete improvements
26 described in the public offering statement;

27 b. exercise any development right;

28 c. maintain sales offices, management offices, signs
29 advertising the common interest community, and models;

30 d. use easements through the common elements for the purpose
31 of making improvements within the common interest community or
32 within real estate which may be added to the common interest
33 community;

34 e. make the common interest community subject to a master
35 association;

36 f. merge or consolidate a common interest community with
37 another common interest community of the same form of ownership

38 g. appoint or remove any officer of the association or any
39 master association or any executive board member during any
40 period of declarant control;

41 h. control any construction, design review, or aesthetic
42 standards committee or process;

43 i. attend meetings of the unit owners and, except during an
44 executive session, the executive board; and

45 j. have access to the records of the association to the same
46 extent as a unit owner.

47 “Unit” means a physical portion of the common interest
48 community designated for separate ownership or occupancy, the

1 boundaries of which are described pursuant to paragraph (5) of
2 subsection a. of N.J.S.46:8E-18. If a unit in a cooperative is owned
3 by a unit owner or is sold, conveyed, voluntarily or involuntarily
4 encumbered, or otherwise transferred by a unit owner, the interest
5 in that unit which is owned, sold, conveyed, encumbered, or
6 otherwise transferred is the right to possession of that unit under a
7 proprietary lease, coupled with the allocated interests of that unit,
8 and the association's interest in that unit is not thereby affected.

9 "Unit owner" means a declarant or other person that owns a unit,
10 or a lessee of a unit in a leasehold common interest community
11 whose lease expires simultaneously with any lease the expiration or
12 termination of which will remove the unit from the common interest
13 community, but does not include a person having an interest in a
14 unit solely as security for an obligation. In a condominium or
15 planned community, the declarant is the owner of any unit created
16 by the declaration. In a cooperative, the declarant is treated as the
17 owner of any unit to which allocated interests have been allocated
18 until that unit has been conveyed to another person.

19 As used in this definition, "unit ownership" does not include
20 holding a leasehold interest of less than 20 years in a unit, including
21 renewal options.

22
23 46:8E-3. No Variation by Agreement.

24 Except as expressly provided in this chapter, the effect of the
25 provisions of the chapter may not be varied by agreement, and
26 rights conferred by it may not be waived. Except as otherwise
27 provided, a declarant may not act under a power of attorney, or use
28 any other device, to evade the limitations or prohibitions of this
29 chapter, or the declaration.

30
31 46:8E-4. Separate titles and taxation.

32 a. In a condominium or planned community:

33 (1) Each unit that has been created, together with its interest in
34 the common elements, constitutes for all purposes a separate parcel
35 of real estate.

36 (2) Each unit shall be separately taxed and assessed, and no
37 separate tax or assessment may be rendered against common
38 elements for which a declarant has reserved no development rights.

39 b. Any portion of the common elements for which the declarant
40 has reserved a development right shall be separately taxed and
41 assessed against the declarant, and the declarant alone is liable for
42 payment of those taxes.

43 c. If there is no unit owner other than a declarant, the real
44 estate comprising the common interest community may be taxed
45 and assessed in any manner provided by law.

46 d. Any reduction in the real estate tax for common elements or
47 common property assessed by a municipality to an association prior
48 to the effective date of P.L. , c. (C.) (pending before the

1 Legislature as this bill) and included in the budget of an association
2 shall be deducted from the association's budget for the following
3 fiscal year.

4

5 46:8E-5. Applicability of local ordinances, regulations and
6 building codes.

7 a. A local unit shall not impose a code requirement upon any
8 structure in a common interest community that differs from a code
9 requirement imposed upon an equivalent structure under a different
10 form of ownership.

11 b. In condominiums and cooperatives, no zoning, subdivision,
12 or other real estate use law, ordinance, or regulation may prohibit
13 the condominium or cooperative form of ownership or impose any
14 requirement upon a condominium or cooperative which it would not
15 impose upon a physically identical development under a different
16 form of ownership.

17 c. Except as provided in subsections a. and b. of this section,
18 the provisions of this chapter shall not invalidate or modify any
19 provision of any building code, zoning, subdivision, or other real
20 estate use law, ordinance, or rule, or regulation governing the use of
21 real estate.

22

23 46:8E-6. Eminent domain.

24 a. If a unit is acquired by eminent domain or part of a unit is
25 acquired by eminent domain leaving the unit owner with a remnant
26 that may not practically or lawfully be used for any purpose
27 permitted by the declaration, the award shall include compensation
28 to the unit owner for that unit and its allocated interests, whether or
29 not any common elements are acquired. Upon acquisition, unless
30 the judgment otherwise provides, that unit's allocated interests shall
31 be reallocated to the remaining units in proportion to the respective
32 allocated interests of those units before the taking, and the
33 association shall promptly prepare, execute, and record an
34 amendment to the declaration reflecting the reallocations. Any
35 remnant of a unit remaining after part of a unit is taken under this
36 subsection shall be a common element.

37 b. Except as provided in subsection a. of this section, if part of
38 a unit is acquired by eminent domain, the award shall compensate
39 the unit owner for the reduction in value of the unit and for the
40 reduction in value of the unit's allocated interests in the common
41 elements, whether or not any common elements are acquired. Upon
42 acquisition, unless the decree otherwise provides: (1) a unit's
43 allocated interests shall be reduced in proportion to the reduction in
44 the size of the unit, or on any other basis specified in the
45 declaration, and (2) the portion of the allocated interests divested
46 from a partially acquired unit shall be automatically reallocated to
47 that unit and to the remaining units in proportion to the respective
48 allocated interests of those units before the taking, with the

1 partially-acquired unit participating in the reallocation on the basis
2 of its reduced allocated interests.

3 c. If part of the common elements is acquired by eminent
4 domain, the portion of the award attributable to the common
5 elements taken shall be paid to the association. Unless the
6 declaration provides otherwise, any portion of the award
7 attributable to the acquisition of a limited common element shall be
8 divided among the owners of the units to which that limited
9 common element was allocated at the time of acquisition in
10 proportion to their rights in the limited common elements.

11 d. The Declaration of Taking or other document evidencing a
12 transfer of title to the condemning authority shall be recorded in
13 every county in which any portion of the common interest
14 community is located.

15

16 46:8E-7. Supplemental general principles of law applicable.

17 The principles of law and equity, including the law of
18 corporations, any other form of organization authorized by the law of
19 this State and unincorporated associations, the law of real estate,
20 and the law relative to capacity to contract, principal and agent,
21 eminent domain, estoppel, fraud, misrepresentation, duress,
22 coercion, mistake, receivership, substantial performance, or other
23 validating or invalidating cause supplement the provisions of this
24 chapter, except to the extent inconsistent with this chapter.

25

26 46:8E-8. Construction against implicit repeal.

27 This chapter, being a general act intended as a unified coverage
28 of its subject matter, no part of it shall be construed to be impliedly
29 repealed by subsequent legislation if that construction can
30 reasonably be avoided.

31

32 46:8E-9. Severability.

33 If any provision of this chapter or the application thereof to any
34 person or circumstance is held invalid, the invalidity shall not affect
35 other provisions or applications of this chapter which can be given
36 effect without the invalid provisions or application, and to this end
37 the provisions of this chapter are severable.

38

39 46:8E-10. Obligation of good faith.

40 Every contract or duty governed by this chapter imposes an
41 obligation of good faith in its performance or enforcement.

42

43 46:8E-11. Remedies to be liberally administered.

44 The remedies provided by this chapter shall be liberally
45 administered to the end that the aggrieved party is put in as good a
46 position as if the other party had fully performed.

1 46:8E-12. Relation to Electronic Signatures in Global and
2 National Commerce Act.

3 This chapter shall modify, limit, and supersede the federal
4 "Electronic Signatures in Global and National Commerce Act," 15
5 U.S.C. s.7001, et seq., but do not modify, limit, or supersede
6 s.101(c) of that act, 15 U.S.C. s.7001(c), or authorize electronic
7 delivery of any of the notices described in s.103(b) of that act, 15
8 U.S.C. s.7003(b).

9
10 46:8E-13. Applicability to common interest communities.

11 a. Except as otherwise provided in this section, this chapter
12 shall apply to all common interest communities within the State.

13 b. This chapter shall not make any action taken before the
14 effective date of this chapter invalid or illegal.

15 c. If a common interest community was validly established
16 before the effective date of this chapter, this chapter shall not
17 require the community to file a declaration.

18 d. This chapter shall not alter the rights and responsibilities of
19 declarants of common interest communities established before the
20 effective date of this chapter.

21 e. "The Planned Real Estate Development Full Disclosure
22 Act," P.L.1977, c.419 (C.45:22A-21 et seq.) shall continue to apply
23 to the respective associations and developers except to the extent
24 that this chapter contains provisions that conflict with that act, in
25 which case the terms of this chapter shall be controlling.

26 f. Unless the reference indicates otherwise, a statutory
27 reference to a condominium, cooperative, or other type of common
28 interest community formed under, or subject to, the "Condominium
29 Act," P.L.1969, c.257 (C.46:8B-1 et seq.), "The Cooperative
30 Recording Act of New Jersey," P.L.1987, c.381 (C.46:8D-1 et al.),
31 the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.),
32 or "The Planned Real Estate Development Full Disclosure Act,"
33 P.L.1977, c.419 (C.45:22A-21 et seq.), shall be construed to include
34 an equivalent type of common interest community, if formed under,
35 or subject to, this chapter.

36 37 ARTICLE 2

38 CREATION, ALTERATION, AND TERMINATION OF 39 COMMON INTEREST COMMUNITIES 40

41 46:8E-14. Creation of common interest communities.

42 A common interest community may be created pursuant to this
43 chapter only by a declaration executed in the same manner as a
44 deed. The declaration shall be recorded in every county in which
45 any portion of the common interest community is located and shall
46 be indexed treating the common interest community as the grantee
47 and each person executing the declaration as the grantors.

1 46:8E-15. Unit boundaries.

2 If the declaration does not expressly provide for certain unit
3 boundaries or the components of units specified below, then:

4 a. If walls, floors, or ceilings are designated as boundaries of a
5 unit, all lath, furring, wallboard, plasterboard, plaster, paneling,
6 tiles, wallpaper, paint, finished flooring, and any other materials
7 constituting any part of the finished surfaces thereof shall be a part
8 of the unit, and all other portions of the walls, floors, or ceilings
9 shall be a part of the common elements.

10 b. If any chute, flue, duct, wire, conduit, bearing wall, bearing
11 column, or any other fixture lies partially within and partially
12 outside the designated boundaries of a unit, any portion thereof
13 serving only that unit shall be a limited common element allocated
14 solely to that unit, and any portion thereof serving more than one
15 unit or any portion of the common elements shall be a part of the
16 common elements.

17 c. Subject to subsection b. of this section, all spaces, interior
18 partitions, and other fixtures and improvements within the
19 boundaries of a unit and all exterior doors and windows shall be a
20 part of the unit.

21 d. Any shutters, awnings, window boxes, doorsteps, stoops,
22 porches, balconies, patios, and fixtures designed to serve a single
23 unit, but located outside the unit's boundaries, shall be limited
24 common elements allocated exclusively to that unit.

25

26 46:8E-16. Construction and validity of declaration and bylaws.

27 a. All provisions of the declaration and bylaws shall be
28 severable.

29 b. If a conflict exists between the declaration and the bylaws, the
30 declaration shall prevail except to the extent the declaration is
31 inconsistent with this chapter.

32 c. Title to a unit and common elements shall not be rendered
33 unmarketable or otherwise be affected by reason of an insubstantial
34 failure of the declaration to comply with this chapter. Whether a
35 substantial failure impairs marketability is not affected by this
36 chapter.

37

38 46:8E-17. Description of units.

39 A description of a unit which sets forth the name of the common
40 interest community, the recording data for the declaration, and the
41 identifying number of the unit, shall be a legally sufficient
42 description of that unit and all rights, obligations, and interests
43 appurtenant to that unit which were created by the declaration or
44 bylaws.

45

46 46:8E-18. Contents of declaration.

47 a. The declaration shall contain:

- 1 (1) the names of the common interest community and the
2 association and a statement that the common interest community is
3 either a condominium, cooperative, or planned community;
- 4 (2) the name of every county in which any part of the common
5 interest community is situated;
- 6 (3) a legally sufficient description of the real estate included in
7 the common interest community;
- 8 (4) a statement of the maximum number of units that the
9 declarant reserves the right to create;
- 10 (5) in a condominium or planned community, a description of
11 the boundaries of each unit created by the declaration, including the
12 unit's identifying number or, in a cooperative, a description, which
13 may be by plats or plans, of each unit created by the declaration,
14 including the unit's identifying number, its size or number of
15 rooms, and its location within a building if it is within a building
16 containing more than one unit;
- 17 (6) a description of any limited common elements, other than
18 those specified in subsections b. and d. of N.J.S.46:8E-15, as
19 provided in paragraph (10) of subsection b. of N.J.S.46:8E-22 and,
20 in a planned community, any real estate that is or shall become
21 common elements;
- 22 (7) a description of any real estate, except real estate subject to
23 development rights, that may be allocated subsequently as limited
24 common elements, other than limited common elements specified in
25 subsections b. and d. of N.J.S.46:8E-15, together with a statement
26 that they may be so allocated;
- 27 (8) a description of any development right and other special
28 declarant rights reserved by the declarant, together with a legally
29 sufficient description of the real estate to which each of those rights
30 applies, and a time limit within which each of those rights shall be
31 exercised;
- 32 (9) if any development right may be exercised with respect to
33 different parcels of real estate at different times, a statement to that
34 effect together with:
 - 35 (a) either a statement fixing the boundaries of those portions and
36 regulating the order in which those portions may be subjected to the
37 exercise of each development right or a statement that no
38 assurances are made in those regards; and
 - 39 (b) a statement as to whether, if any development right is
40 exercised in any portion of the real estate subject to that
41 development right, that development right shall be exercised in all
42 or in any other portion of the remainder of that real estate;
- 43 (10) any other conditions or limitations under which the rights
44 described in paragraph (8) of this subsection may be exercised or
45 lapse;
- 46 (11) an allocation to each unit of the allocated interests in the
47 manner described in N.J.S.46:8E-20;

- 1 (12) any restrictions on alienation of the units, including any
- 2 restrictions on leasing which exceed the restrictions on leasing units
- 3 which executive boards may impose and on the amount for which a
- 4 unit may be sold or on the amount that may be received by a unit
- 5 owner on sale, condemnation, or casualty loss to the unit or to the
- 6 common interest community, or on termination of the common
- 7 interest community;
- 8 (13) the recording data for recorded easements and licenses
- 9 appurtenant to or included in the common interest community or to
- 10 which any portion of the common interest community is or may
- 11 become subject by virtue of a reservation in the declaration;
- 12 (14) any authorization pursuant to which the association may
- 13 establish and enforce construction and design criteria and aesthetic
- 14 standards;
- 15 (15) Provisions concerning reserves that:
- 16 (a) mandate that the association create and maintain reserves for
- 17 the replacement or repair of the common elements, together with a
- 18 statement of the basis on which those reserves are to be calculated
- 19 and funded; or
- 20 (b) allow that the association may, but is not required to, create
- 21 and maintain reserves;
- 22 (16) the bylaws; and
- 23 (17) all matters required by N.J.S.46:8E-19 through -22, and
- 24 N.J.S.46:8E-28 through -31.
- 25 b. The declaration may contain any other matters the declarant
- 26 considers appropriate, including any restrictions on the uses of a
- 27 unit or the number or other qualifications of persons who may
- 28 occupy units.
- 29
- 30 46:8E-19. Leasehold common interest communities.
- 31 a. Any lease the expiration or termination of which may
- 32 terminate the common interest community or reduce its size shall be
- 33 recorded. Every lessor of those leases in a condominium or planned
- 34 community shall sign the declaration. The declaration shall state:
- 35 (1) the recording data for the lease;
- 36 (2) the date on which the lease is scheduled to expire;
- 37 (3) a legally sufficient description of the real estate subject to
- 38 the lease;
- 39 (4) any right of the unit owners to redeem the reversion and the
- 40 manner whereby those rights may be exercised, or a statement that
- 41 they do not have those rights;
- 42 (5) any right of the unit owners to remove any improvements
- 43 within a reasonable time after the expiration or termination of the
- 44 lease, or a statement that they do not have those rights; and
- 45 (6) any rights of the unit owners to renew the lease and the
- 46 conditions of any renewal, or a statement that they do not have
- 47 those rights.

1 b. After the declaration for a leasehold condominium or
2 leasehold planned community is recorded, neither the lessor nor the
3 lessor's successor in interest may terminate the leasehold interest of
4 a unit owner who makes timely payment of a unit owner's share of
5 the rent and otherwise complies with all covenants which, if
6 violated, would entitle the lessor to terminate the lease. A unit
7 owner's leasehold interest in a condominium or planned community
8 is not affected by failure of any other person to pay rent or fulfill
9 any other covenant.

10 c. Acquisition of the leasehold interest of any unit owner by
11 the owner of the reversion or remainder does not merge the
12 leasehold and fee simple interests unless the leasehold interests of
13 all unit owners subject to that reversion or remainder are acquired.

14 d. If the expiration or termination of a lease decreases the
15 number of units in a common interest community, the allocated
16 interests shall be reallocated in accordance with subsection a. of
17 N.J.S.46:8E-6 as if those units had been taken by eminent domain.
18 Reallocations shall be confirmed by an amendment to the
19 declaration prepared, executed, and recorded by the association.

20

21 46:8E-20. Allocation of allocated interests.

22 a. The declaration shall allocate to each unit:

23 (1) in a condominium, a fraction or percentage of undivided
24 interests in the common elements and in the common expenses of
25 the association, and a portion of the votes in the association;

26 (2) in a cooperative, an ownership interest in the association, a
27 fraction or percentage of the common expenses of the association,
28 and a portion of the votes in the association; and

29 (3) in a planned community, a fraction or percentage of the
30 common expenses of the association, and a portion of the votes in
31 the association.

32 b. The declaration shall state the formulas used to establish
33 allocations of interests. Those allocations shall not discriminate in
34 favor of units owned by the declarant or an affiliate of the declarant.

35 c. If units shall be added to or withdrawn from the common
36 interest community, the declaration shall state the formulas to be
37 used to reallocate the allocated interests among all units included in
38 the common interest community after the addition or withdrawal.

39 d. The declaration shall provide:

40 (1) that different allocations of votes shall be made to the units
41 on particular matters specified in the declaration;

42 (2) for cumulative voting only for the purpose of electing
43 members of the executive board; and

44 (3) for class voting on specified issues affecting the class if
45 necessary to protect valid interests of the class. A declarant may
46 not utilize cumulative or class voting for the purpose of evading any
47 limitation imposed on declarants by this chapter, nor may units
48 constitute a class because they are owned by a declarant.

1 e. Except for minor variations due to rounding, the sum of the
2 common expense liabilities and, in a condominium, the sum of the
3 undivided interests in the common elements allocated at any time to
4 all the units shall each equal one if stated as a fraction or 100
5 percent if stated as a percentage. In the event of discrepancy
6 between an allocated interest and the result derived from application
7 of the pertinent formula, the allocated interest prevails.

8 f. In a condominium, the common elements shall not be
9 subject to partition. Any purported conveyance, encumbrance,
10 judicial sale, or other voluntary or involuntary transfer of an
11 undivided interest in the common elements made without the unit to
12 which that interest is allocated shall be void.

13 g. In a cooperative, any purported conveyance, encumbrance,
14 judicial sale, or other voluntary or involuntary transfer of an
15 ownership interest in the association made without the possessory
16 interest in the unit to which that interest is related shall be void.

17

18 46:8E-21. Limited common elements.

19 a. Except for the limited common elements described in
20 subsections b. and d. of N.J.S.46:8E-15, the declaration shall
21 specify to which unit or units each limited common element is
22 allocated. An allocation shall not be altered without the consent of
23 the unit owners whose units are affected.

24 b. Except as the declaration otherwise provides, a limited
25 common element may be reallocated by an amendment to the
26 declaration executed by the unit owners between or among whose
27 units the reallocation is made. The persons executing the
28 amendment shall provide a copy thereof to the association, which
29 shall record it. The amendment shall be recorded in the names of
30 the parties and the common interest community.

31 c. A common element not previously allocated as a limited
32 common element may be so allocated only (1) pursuant to
33 provisions in the declaration made in accordance with paragraph (7)
34 of subsection a. of N.J.S.46:8E-18, or (2) if required by statute.
35 The allocations shall be made by amendments to the declaration.

36

37 46:8E-22. Plats and plans.

38 a. Plats and plans shall be a part of a declaration, and shall be
39 required for all common interest communities except cooperatives.
40 Separate plats and plans are not required by this chapter if all the
41 information required by this section is contained in either a plat or
42 plan. Each plat and plan shall be clear and legible and contain a
43 certification that the plat or plan contains all information required
44 by this section.

45 b. Each plat shall show or project:

46 (1) the name and a survey or general schematic map of the
47 entire common interest community;

- 1 (2) the location and dimensions of all real estate not subject to
- 2 development rights, or subject only to the development right to
- 3 withdraw, and the location and dimensions of all existing
- 4 improvements within that real estate;
- 5 (3) a legally sufficient description of any real estate subject to
- 6 development rights, labeled to identify the rights applicable to each
- 7 parcel, but plats and plans need not designate or label which
- 8 development rights are applicable to each parcel if that information
- 9 is clearly delineated in the declaration;
- 10 (4) the extent of any encroachments by or upon any portion of
- 11 the common interest community;
- 12 (5) to the extent feasible, a legally sufficient description of all
- 13 easements serving or burdening any portion of the common interest
- 14 community;
- 15 (6) except as otherwise provided in subsection h. of this section,
- 16 the approximate location and dimensions of any vertical unit
- 17 boundaries not shown or projected on plans recorded pursuant to
- 18 subsection d. of this section and that unit's identifying number;
- 19 (7) except as otherwise provided in subsection h. of this section,
- 20 the approximate location with reference to an established datum of
- 21 any horizontal unit boundaries not shown or projected on plans
- 22 recorded pursuant to subsection d. of this section and that unit's
- 23 identifying number;
- 24 (8) a legally sufficient description of any real estate in which the
- 25 unit owners shall own only an estate for years, labeled as leasehold
- 26 real estate;
- 27 (9) the distance between non-contiguous parcels of real estate
- 28 comprising the common interest community;
- 29 (10) the approximate location and dimensions of any porches,
- 30 decks, balconies, garages, or patios allocated as limited common
- 31 elements, and show or contain a narrative description of any other
- 32 limited common elements; and
- 33 (11) for real estate not subject to development rights, all other
- 34 matters customarily shown on land surveys.
- 35 c. A plat may show the intended location and dimensions of a
- 36 contemplated improvement that may be constructed within the
- 37 common interest community. Any contemplated improvement
- 38 shown shall be labeled either **MUST BE BUILT** or **NEED NOT BE**
- 39 **BUILT**.
- 40 d. Except as otherwise provided in subsection h. of this section,
- 41 to the extent not shown or projected on the plats, plans of the units
- 42 shall show or project:
 - 43 (1) the approximate location and dimensions of the vertical
 - 44 boundaries of each unit, and that unit's identifying number;
 - 45 (2) the approximate location of any horizontal unit boundaries,
 - 46 with reference to an established datum, and that unit's identifying
 - 47 number; and

1 (3) the approximate location of any units in which the declarant
2 has reserved the right to create additional units or common
3 elements, identified appropriately.

4 e. Unless a horizontal boundary of part of a unit located
5 outside a building has the same elevation as the horizontal boundary
6 of the inside part of the unit the plats and plans shall depict the
7 elevation.

8 f. Upon exercising any development right, the declarant shall
9 record either new plats and plans necessary to conform to the
10 requirements of subsections a., b., and d. of this section, or new
11 certifications of plats and plans previously recorded if those plats
12 and plans otherwise conform to the requirements of those
13 subsections.

14 g. A certification of a plat or plan required by this section, or
15 N.J.S.46:8E-14, shall be made in accordance with N.J.S.46:26B-1 et
16 al. by the person who is legally authorized to practice land
17 surveying in this State as provided by P.L.1938, c.342 (C.45:8-27 et
18 seq.).

19 h. Plats and plans need not show the location and dimensions
20 of the units' boundaries or their limited common elements if:

21 (1) the plat shows the location and dimensions of all buildings
22 containing or comprising the units; and

23 (2) the declaration includes other information that shows or
24 contains a narrative description of the general layout of the units in
25 those buildings and the limited common elements allocated to those
26 units.

27
28 46:8E-23. Exercise of development rights.

29 a. To exercise any development right reserved under paragraph
30 (8) of subsection a. of N.J.S.46:8E-18, the declarant shall prepare,
31 execute, and record an amendment to the declaration pursuant to
32 N.J.S.46:8E-30 and in a condominium or planned community
33 comply with N.J.S.46:8E-22. The declarant is the unit owner of any
34 units thereby created. The amendment to the declaration shall
35 assign an identifying number to each new unit created, and, except
36 in the case of subdivision or conversion of units described in
37 subsection b. of this section, reallocate the allocated interests
38 among all units. The amendment shall describe any common
39 elements and any limited common elements thereby created and, in
40 the case of limited common elements, designate the unit to which
41 each is allocated to the extent required by N.J.S.46:8E-21.

42 b. Development rights may be reserved within any real estate
43 added to the common interest community if the amendment adding
44 that real estate includes all matters required by N.J.S.46:8E-18 or
45 N.J.S.46:8E-19, as the case may be, and, in a condominium or
46 planned community, the plats and plans include all matters required
47 by N.J.S.46:8E-22. This provision does not extend the time limit on

1 the exercise of development rights imposed by the declaration
2 pursuant to paragraph (8) of subsection a. of N.J.S.46:8E-18.

3 c. Whenever a declarant exercises a development right to
4 subdivide or convert a unit previously created into additional units,
5 common elements, or both:

6 (1) if the declarant converts the unit entirely to common
7 elements, the amendment to the declaration shall, pursuant to
8 N.J.S.46:8E-6, reallocate all the allocated interests of that unit
9 among the other units as if that unit had been taken by eminent
10 domain; and

11 (2) if the declarant subdivides the unit into two or more units,
12 whether or not any part of the unit is converted into common
13 elements, the amendment to the declaration shall reallocate all the
14 allocated interests of the unit among the units created by the
15 subdivision in any reasonable manner prescribed by the declarant.

16 d. If the declaration provides, pursuant to paragraph (8) of
17 subsection a. of N.J.S.46:8E-18, that all or a portion of the real
18 estate is subject to a right of withdrawal:

19 (1) if all the real estate is subject to withdrawal, and the
20 declaration does not describe separate portions of real estate subject
21 to that right, none of the real estate may be withdrawn after a unit
22 has been conveyed to a purchaser; and

23 (2) if any portion is subject to withdrawal, it may not be
24 withdrawn after a unit in that portion has been conveyed to a
25 purchaser.

26

27 46:8E-24. Alterations of units.

28 Subject to the provisions of the declaration and other provisions
29 of law, a unit owner:

30 a. may make any improvements or alterations to the owner's
31 unit that do not impair the structural integrity or mechanical
32 systems or lessen the support of any portion of the common interest
33 community;

34 b. may not change the exterior appearance of a unit, without
35 permission of the association;

36 c. may not change the appearance of the common elements or
37 other portion of the common interest community, without the
38 permission of the association;

39 d. in a planned community or part of a common interest
40 community without adjoining units, where the units were constructed
41 pursuant to a common architectural scheme or design, or contained
42 restrictions in the declaration or bylaws limiting the units to certain
43 colors or design schemes, the exterior appearance of a unit may not be
44 changed without permission of the association;

45 e. after acquiring an adjoining unit or an adjoining part of an
46 adjoining unit, may remove or alter any intervening partition or
47 create apertures therein, even if the partition in whole or in part is a
48 common element, if those acts do not impair the structural integrity

1 or mechanical systems or lessen the support of any portion of the
2 common interest community. Removal of partitions or creation of
3 apertures under this paragraph shall not be an alteration of
4 boundaries.

5
6 46:8E-25. Relocation of unit boundaries.

7 a. Subject to the provisions of the declaration and other
8 provisions of law, the boundaries between adjoining units may be
9 relocated by an amendment to the declaration upon application to
10 the association by the owners of those units. If the owners of the
11 adjoining units have specified a reallocation between their units of
12 their allocated interests, the application shall state the proposed
13 reallocations. Unless the executive board determines, within 30
14 days, that the reallocations are unreasonable, the association shall
15 prepare an amendment that identifies the units involved and states
16 the reallocations. The amendment shall be executed by those unit
17 owners, contain words of conveyance between them, and, on
18 recordation, be indexed in the name of the grantor and the grantee,
19 and in the name of the association.

20 b. Subject to the provisions of the declaration and other
21 provisions of law, boundaries between units and common elements
22 may be relocated to incorporate common elements within a unit by
23 an amendment to the declaration upon application to the association
24 by the owner of the unit who proposes to relocate a boundary.
25 Unless the declaration provides otherwise, the amendment may be
26 approved only if persons entitled to cast at least 67 percent of the
27 votes in the association, including 67 percent of the votes allocated
28 to units not owned by the declarant, agree to the action. The
29 amendment may describe any fees or charges payable by the owner
30 of the affected unit in connection with the boundary relocation and
31 the fees and charges are assets of the association. The amendment
32 shall be executed by the unit owner of the unit whose boundary is
33 being relocated and by the association, contain words of
34 conveyance between them, and on recordation be indexed in the
35 name of the unit owner and the association as grantor or grantee, as
36 appropriate.

37 c. The association (1) in a condominium or planned community
38 shall prepare and record plats or plans necessary to show the altered
39 boundaries of affected units, and their dimensions and identifying
40 numbers, and (2) in a cooperative shall prepare and record
41 amendments to the declaration, including any plans necessary to
42 show or describe the altered boundaries of affected units, and their
43 dimensions and identifying numbers.

44
45 46:8E-26. Subdivision of units.

46 a. If the declaration expressly so permits, a unit may be
47 subdivided into two or more units. Subject to the declaration and
48 law other than this chapter, upon application of a unit owner to

1 subdivide a unit, the association shall prepare, execute, and record
2 an amendment to the declaration including, in a condominium or
3 planned community, the plats and plans subdividing that unit.

4 b. The amendment to the declaration shall be executed by the
5 owner of the unit to be subdivided, assign an identifying number to
6 each unit created, and reallocate the allocated interests formerly
7 allocated to the subdivided unit to the new units in any reasonable
8 manner prescribed by the owner of the subdivided unit or on any
9 other basis the declaration requires.

10

11 46:8E-27. Monuments as boundaries.

12 The existing physical boundaries of a unit or the physical
13 boundaries of a unit reconstructed in substantial accordance with
14 the description contained in the original declaration shall be the
15 unit's legal boundaries, rather than the boundaries derived from the
16 description contained in the original declaration, regardless of
17 vertical or lateral movement of the building or minor variance
18 between those boundaries and the boundaries derived from the
19 description contained in the original declaration. This section shall
20 not relieve a unit owner of liability in case of the unit owner's
21 willful misconduct or relieve a declarant or any other person of
22 liability for failure to adhere to any plats and plans or, in a
23 cooperative, to any representation in the public offering statement.

24

25 46:8E-28. Use for sales purposes.

26 A declarant may maintain sales offices, management offices, and
27 models in units or on common elements in the common interest
28 community only if the declaration so provides and specifies the
29 rights of the declarant with regard to the number, size, location, and
30 relocation thereof. In a cooperative or condominium, any sales
31 office, management office, or model not designated a unit by the
32 declaration shall be a common element. If a declarant ceases to be
33 a unit owner, then the declarant ceases to have any rights with
34 regard to the offices and models unless the declarant promptly
35 removes them from the common interest community in accordance
36 with a right to remove reserved in the declaration. Subject to any
37 limitations in the declaration, a declarant may maintain signs on the
38 common elements advertising the common interest community.
39 This section is subject to the provisions of other State law and to
40 local ordinances.

41

42 46:8E-29. Easement and use rights.

43 a. Subject to the declaration, a declarant shall have an
44 easement through the common elements as may be reasonably
45 necessary for the purpose of discharging the declarant's obligations
46 or exercising special declarant rights, whether arising under this
47 chapter, or reserved in the declaration.

1 b. Subject to the declaration, or provisions of the community
2 association rules or regulations on the use, maintenance, repair,
3 replacement, and modification of common elements the unit owners
4 shall have an easement in the common elements for access to their
5 units.

6 c. Subject to the declaration and rules, the unit owners shall
7 have a right to use the common elements that are not limited
8 common elements and all real estate that shall become common
9 elements for the purposes for which they were intended.

10

11 46:8E-30. Amendment of declaration.

12 a. (1) Subject to the declaration, the declaration, including any
13 plats and plans, may be amended only by vote or agreement of
14 votes representing at least 67 percent of the allocated votes present
15 in person, by proxy, absentee ballot or electronic ballot where the
16 quorum shall not be less than 50 percent of the allocated votes in
17 the association qualified to vote.

18 (2) The limitations of paragraph (1) of this subsection shall not
19 apply in cases of amendments that are executed by:

20 (a) a declarant under subsection f. of N.J.S.46:8E-22, or under
21 N.J.S.46:8E-23;

22 (b) the association under N.J.S.46:8E-6, subsection d. of
23 N.J.S.46:8E-19, subsection c. of N.J.S.46:8E-21, subsection a. of
24 N.J.S.46:8E-25, or N.J.S.46:8E-26;

25 (c) certain unit owners under subsection b. of N.J.S.46:8E-21,
26 subsection a. of N.J.S.46:8E-25, subsection b. of N.J.S.46:8E-26, or
27 subsection b. of N.J.S.46:8E-31; or

28 (d) the executive board to render an inconsistent portion of the
29 declaration to be consistent with applicable law.

30 b. Notwithstanding any provision of section 4 of P.L.1993, c.30
31 (C.45:22A-46) to the contrary, with respect to any common interest
32 community created after the effective date of this chapter, within 24
33 months following the earlier of the conveyance of title to the last unit
34 in the common interest community or, except where the declaration
35 provides that the common interest community may consist of more
36 than 750 units, 10 years following the sale of the first unit in the
37 common interest community, the executive board shall re-examine
38 the bylaws, declaration and rules of the association and present
39 proposed amendments as the executive board may deem
40 appropriate, as well as amendments proposed by initiative signed by
41 persons eligible to cast at least 20 percent of the votes, for approval
42 by vote of the unit owners. Any proposed amendment shall be
43 unambiguous and consistent with applicable law and with the
44 provisions of the governing documents that are not proposed to be
45 amended. Notwithstanding the terms of a declaration or bylaws, an
46 amendment to an existing bylaw, rule, or declaration, and subject to
47 the limitations expressed in subsection c. of this section, an
48 amendment may be adopted by the lesser of: (1) a majority of the

1 voting interest in the association; or (2) 67 percent of the voting
2 interest actually cast, provided not less than a majority of the
3 eligible votes have been cast. At least 30 days advance notice of
4 any referendum, including the text of any new bylaw or amendment
5 or repeal of an existing provision to be voted on, shall be given to
6 all unit owners by registered or certified mail, by personal delivery,
7 or where the unit owner consents, by electronic communication.

8 c. (1) A proposed amendment shall not reduce the boundaries
9 of a unit or the unit's limited common elements without consent of
10 that unit owner.

11 (2) A proposed amendment shall not violate a clear mandate of
12 public policy.

13 (3) A proposed amendment that seeks to prohibit a previously
14 permitted use of a unit shall provide reasonable protection for a use
15 or occupancy permitted at the time the amendment was adopted.
16 An amendment that seeks to prohibit a previously permitted use in a
17 unit, shall require approval by a vote of at least 67 percent of the
18 total allocated votes in the association.

19 (4) Except to the extent expressly permitted or required by other
20 provisions of this chapter, an amendment shall not create or
21 increase special declarant rights, or except as permitted by the
22 declaration increase the number of units or change the boundaries
23 of any unit or the allocated interests of a unit in the absence of
24 unanimous consent of the unit owners.

25 (5) The time limits specified in a declaration within which a
26 declarant's reserved development rights may be exercised, and
27 within which additional development rights may be created, shall be
28 extended only if at least 80 percent of the votes in the association,
29 including 80 percent of the votes allocated to units not owned by
30 the declarant, agree to that action.

31 d. An action to challenge the validity of an amendment adopted
32 by an association pursuant to this section, other than an action by a
33 governmental official or entity authorized to do so by statute or
34 regulation adopted pursuant to statute, shall not be brought more
35 than one year after the amendment is recorded.

36 e. An amendment to a declaration shall be recorded in every
37 county in which any portion of the common interest community is
38 located and shall be effective only upon recordation. An
39 amendment, except an amendment pursuant to subsection a. of
40 N.J.S.46:8E-25, shall be indexed in the name of the common
41 interest community and the association as grantees and in the name
42 of the parties executing the amendment as grantors. Amendments
43 to the declaration required to be recorded by the association shall be
44 prepared, executed, recorded, and certified on behalf of the
45 association by any officer of the association designated for that
46 purpose or, in the absence of designation, by the president of the
47 association.

1 f. If the declaration of a common interest community, whether
2 created before or after the effective date of P.L. c. (N.J.S.)
3 (pending before the Legislature as this bill), requires the consent of
4 a person holding a security interest in a unit as a condition to the
5 effectiveness of an amendment to the declaration, that consent shall
6 be granted if no written refusal to consent is received by the
7 association within 60 days after the association delivers notice of
8 the proposed amendment to the holder of the security interest or
9 mails the notice to the holder of the security interest by certified
10 mail, return receipt requested. The association may rely on the last-
11 recorded security interest of record in delivering or mailing notice
12 to the holder of that interest.

13 g. If the declaration of a common interest community, whether
14 created before or after the effective date of P.L. c. (N.J.S.)
15 (pending before the Legislature as this bill), contains a provision
16 requiring amendments to be adopted only by the vote or agreement
17 of unit owners of units to which more than 80 percent of the votes
18 in the association are allocated, a proposed amendment shall be
19 deemed approved if:

20 (1) (a) unit owners of units to which at least 80 percent of the
21 votes in the association are allocated vote for or agree to the
22 proposed amendment;

23 (b) no unit owner votes against the proposed amendment; and

24 (c) notice of the proposed amendment is delivered to the unit
25 owners holding the votes in the association that have not voted or
26 agreed to the proposed amendment and no written objection to the
27 proposed amendment is received by the association within 30 days
28 after the association delivers notice; or

29 (2) Unit owners of units to which at least 80 percent of the votes
30 in the association are allocated vote for or agree to the proposed
31 amendment, but at least one unit owner objects to the proposed
32 amendment and, pursuant to an action brought by the association in
33 the Superior Court against all objecting unit owners, the court finds
34 that the objecting unit owners do not have a unique minority
35 interest, different in kind from the interests of the unit owners, that
36 the voting requirement of the declaration is intended to protect.

37

38 46:8E-31. Termination of common interest community.

39 a. Except for a taking of all the units by eminent domain,
40 foreclosure against an entire cooperative of a security interest that
41 has priority over the declaration, or in the circumstances described
42 in N.J.S.46:8E-37, a common interest community may be
43 terminated, or a portion of the common interest community may be
44 removed from the common interest community, only by agreement of
45 unit owners of units to which at least 80 percent of the votes in the
46 association are allocated, or any larger percentage the declaration
47 specifies, and with any other approvals required by the declaration.

1 The declaration may specify a smaller percentage only if all of the
2 units are restricted exclusively to nonresidential uses.

3 b. An agreement to terminate shall be evidenced by the
4 execution of a termination agreement, or ratifications of the
5 agreement, in the same manner as a deed, by the requisite number
6 of unit owners. A termination agreement and all ratifications of it
7 shall be recorded in every county in which a portion of the common
8 interest community is situated and shall be effective only upon
9 recordation.

10 c. Except as provided in subsection d. of this section, a
11 termination agreement shall provide that all of the common
12 elements and units of the common interest community shall be sold
13 following termination and shall set forth the minimum terms of the
14 sale.

15 d. If a unit meets zoning and planning requirements as an
16 independent parcel of real estate at the time of termination, a
17 termination agreement shall provide that the owner may retain
18 ownership of that unit.

19 e. An association, on behalf of the unit owners, may contract
20 for the sale of real estate in a common interest community, but the
21 contract shall not be binding on the unit owners until approved
22 pursuant to subsection a. of this section. Upon termination, the
23 assets of the association, title to real estate and proceeds shall vest
24 in the association as trustee for the holders of all interests in the
25 units. Until a sale has been concluded and the proceeds distributed,
26 the association shall continue in existence with all powers it had
27 before termination.

28 f. On termination of the common interest community,
29 proceeds, after payment of valid liens, shall be paid to unit owners
30 in proportion to the fair market value immediately before
31 termination of their units including the value of allocated interests
32 and limited common elements.

33 g. Following termination of a condominium or planned
34 community, creditors of the association holding liens on the units,
35 which were docketed before termination, may enforce those liens in
36 the same manner as any lien holder. Any other creditor of the
37 association shall be treated as if the creditor had perfected a lien on
38 the units immediately before termination.

39 h. In a cooperative, a declaration may provide that all creditors
40 of the association shall have priority over any interests of unit
41 owners and creditors of unit owners. In that event, following
42 termination, creditors of the association holding liens on the
43 cooperative which were docketed before termination may enforce
44 their liens in the same manner as any lien holder. Any other
45 creditor of the association shall be treated as if the creditor had
46 perfected a lien against the cooperative immediately before
47 termination. Unless the declaration provides that all creditors of the
48 association have that priority:

1 (1) the lien of each creditor of the association which was
2 perfected against the association before termination shall become,
3 upon termination, a lien against each unit owner's interest in the
4 unit as of the date the lien was perfected;

5 (2) any other creditor of the association shall be treated upon
6 termination as if the creditor had perfected a lien against each unit
7 owner's interest immediately before termination;

8 (3) the amount of the lien of an association's creditor described
9 in paragraphs (1) and (2) against each of the unit owners' interest
10 shall be proportionate to the ratio which each unit's common
11 expense liability bears to the common expense liability of all of the
12 units;

13 (4) the lien of each creditor of each unit owner which was
14 perfected before termination shall continue as a lien against that
15 unit owner's unit as of the date the lien was perfected;

16 (5) the assets of the association shall be distributed to all unit
17 owners and all lien holders as their interests may appear in the order
18 described in this subsection; and

19 (6) creditors of the association shall not be entitled to payment
20 from a unit owner in excess of the amount of the creditor's lien
21 against that unit owner's interest.

22 i. In a condominium or planned community, except as
23 otherwise provided in paragraph (1) of subsection h. of this section,
24 foreclosure or enforcement of a lien or encumbrance against the
25 entire common interest community shall not terminate, of itself, the
26 common interest community, and foreclosure or enforcement of a
27 lien or encumbrance against a portion of the common interest
28 community, other than withdrawable real estate, shall not withdraw
29 that portion from the common interest community. Foreclosure or
30 enforcement of a lien or encumbrance against withdrawable real
31 estate, or against common elements that have been subjected to a
32 security interest by the association, shall not withdraw, of itself,
33 that real estate from the common interest community, but the person
34 taking title thereto may require from the association, upon request,
35 an amendment excluding the real estate from the common interest
36 community.

37 j. In a condominium or planned community, if a lien or
38 encumbrance against a portion of the real estate comprising the
39 common interest community has priority over the declaration and
40 the lien or encumbrance has not been partially released, the parties
41 foreclosing the lien or encumbrance, upon foreclosure, may record
42 an instrument excluding the real estate subject to that lien or
43 encumbrance from the common interest community.
44

45 46:8E-32. Rights of secured lenders.

46 a. The declaration may require that all or a specified number or
47 percentage of the lenders who hold security interests encumbering
48 units, or who have extended credit to the association, approve

1 specified actions of the unit owners or the association as a condition
2 to the effectiveness of those actions, but no requirement for
3 approval may operate to:

4 (1) deny or delegate control over the general administrative
5 affairs of the association by the unit owners or the executive board,

6 (2) prevent the association or the executive board from
7 commencing, intervening in, or settling any litigation or
8 proceeding, or

9 (3) prevent any insurance trustee or the association from
10 receiving and distributing any insurance proceeds.

11 b. A lender who has extended credit to an association secured
12 by an assignment of income or an encumbrance on the common
13 elements may enforce its security agreement in accordance with its
14 terms, subject to the requirements of this chapter, and other law.
15 Requirements that the association shall deposit its periodic common
16 charges before default with the lender to which the association's
17 income has been assigned, or increase its common charges at the
18 lender's direction by amounts reasonably necessary to amortize the
19 loan in accordance with its terms, shall not violate the prohibitions
20 on lender approval contained in subsection a. of this section.

21

22 46:8E-33. Master associations.

23 a. If the declaration provides that any of the powers of the unit
24 owners association, also referred to as the association under this
25 chapter, are to be exercised by or may be delegated to a profit or
26 nonprofit corporation that exercises those or other powers on behalf
27 of one or more common interest communities or for the benefit of
28 the unit owners of one or more common interest communities, all
29 provisions of this chapter applicable to unit owners' associations
30 shall apply to any such corporation or unincorporated association,
31 except as modified by this section.

32 b. Unless it is acting in the capacity of an unit owners
33 association, a master association may exercise powers over budgets
34 and finances only to the extent expressly permitted in the
35 declarations of the common interest communities that are part of the
36 master association or expressly described in the delegations of
37 power from those common interest communities to the master
38 association.

39 c. If the declaration of any common interest community
40 provides that the executive board may delegate certain powers to a
41 master association, the members of the executive board shall not be
42 liable for the acts or omissions of the master association with
43 respect to those powers following delegation.

44 d. The rights and responsibilities of unit owners with respect to
45 the unit owners' association shall apply in the conduct of the affairs
46 of a master association only to persons who elect the board of a
47 master association, whether or not those persons are otherwise unit
48 owners within the meaning of this chapter.

1 e. Even if a master association is also a unit owners
2 association, the certificate of incorporation or other instrument
3 creating the master association and the declaration of each common
4 interest community, the powers of which are assigned by the
5 declaration or delegated to the master association, may provide that
6 the executive board of the master association shall be elected after
7 the period of declarant control in any of the following ways:

8 (1) All unit owners of all common interest communities subject
9 to the master association may elect all members of the master
10 association's executive board.

11 (2) All members of the executive boards of all common interest
12 communities subject to the master association may elect all
13 members of the master association's executive board.

14 (3) All unit owners of each common interest community subject
15 to the master association may elect specified members of the master
16 association's executive board.

17 (4) All members of the executive board of each common interest
18 community subject to the master association may elect specified
19 members of the master association's executive board.

20

21 46:8E-34. Merger or consolidation of common interest
22 communities.

23 a. Any two or more common interest communities of the same
24 form of ownership, by agreement of the unit owners as provided in
25 subsection b. of this section, may be merged or consolidated into a
26 single common interest community. In the event of a merger or
27 consolidation, unless the agreement otherwise provides, the
28 resultant common interest community shall be the legal successor,
29 for all purposes, of the pre-existing common interest communities,
30 and the operations and activities of the associations of the pre-
31 existing common interest communities shall be merged or
32 consolidated into a single association that holds all powers, rights,
33 obligations, assets, and liabilities of all pre-existing associations.

34 b. Subject to the declaration, an agreement of two or more
35 common interest communities to merge or consolidate pursuant to
36 subsection a. of this section shall be evidenced by an agreement
37 prepared, executed, recorded, and certified by the president of the
38 association of each of the pre-existing common interest
39 communities following approval by 67 percent of the allocated
40 votes qualified to vote in each common interest community. The
41 agreement shall be recorded in every county in which a portion of
42 the common interest community is located and shall not be effective
43 until recorded.

44 c. Every merger or consolidation agreement shall provide for
45 the reallocation of the allocated interests in the new association
46 among the units of the resultant common interest community either:

47 (1) by stating the reallocations or the formulas upon which they
48 are based, or

1 (2) by stating the percentage of overall allocated interests of the
2 new common interest community which are allocated to all of the
3 units comprising each of the pre-existing common interest
4 communities, and providing that the portion of the percentages
5 allocated to each unit formerly comprising a part of the pre-existing
6 common interest community shall be equal to the percentages of
7 allocated interests allocated to that unit by the declaration of the
8 pre-existing common interest community.

9
10 46:8E-35. Addition of unspecified real estate.

11 In a planned community, if the right to add real estate is
12 originally reserved in the declaration, the declarant in addition to
13 any other development right, may amend the declaration at any time
14 during as many years as are specified in the declaration for adding
15 additional real estate to the planned community without describing
16 the location of that real estate in the original declaration; but, the
17 amount of real estate added to the planned community pursuant to
18 this section may not exceed 10 percent of the real estate described
19 in paragraph (3) of subsection a. of N.J.S.46:8E-18, and the
20 declarant may not in any event increase the number of units in the
21 planned community beyond the number stated in the original
22 declaration pursuant to paragraph (5) of subsection a. of
23 N.J.S.46:8E-18.

24
25 46:8E-36. Master planned communities.

26 a. The declaration for a common interest community may state
27 that it is a master planned community if the declarant has reserved
28 the development right to create at least 300 units that may be used
29 for residential purposes and has obtained preliminary site plan or
30 subdivision approval permitting the declarant to construct at least
31 300 residential units pursuant to the "Municipal Land Use Law,"
32 P.L.1975, c.291 (C.40:55D-1 et seq.).

33 b. If the requirements of subsection a. of this section are
34 satisfied, the declaration for the master planned community need
35 not state a maximum number of units and need not contain any of
36 the information required by paragraphs (3) through (14) of
37 subsection a. of N.J.S.46:8E-18 until the declaration is amended
38 under subsection c. of this section.

39 c. When each unit in a master planned community is conveyed
40 to a purchaser, the declaration shall contain:

41 (1) a sufficient legal description of the unit and all portions of
42 the master planned community in which any other units have been
43 conveyed to a purchaser; and

44 (2) all the information required by paragraphs (3) through (14)
45 of subsection a. of N.J.S.46:8E-18 with respect to that real estate.

46 d. Notwithstanding any other provision of this chapter:

47 (1) the only real estate in a master planned community which
48 shall be subject to this chapter is that which comprises:

- 1 (a) units that have been declared or which are being offered for
2 sale; and
- 3 (b) real estate described pursuant to subsection c. of this section;
- 4 (2) other real estate that is or may become part of the master
5 planned community shall be subject only to other applicable laws
6 and to any other restrictions and limitations that appear of record;
7 and
- 8 (3) if the public offering statement conspicuously identifies the
9 community as a master planned community, the disclosure
10 requirements shall apply only with respect to units that have been
11 declared or are being offered for sale in connection with the public
12 offering statement and to the real estate described in subsection c.
13 of this section.
- 14 e. Limitations in this chapter on the addition of unspecified
15 real estate shall not apply to a master planned community.
- 16 f. The period of declarant control of the association for a
17 master planned community shall terminate in accordance with
18 conditions specified in the declaration or otherwise at the time the
19 declarant, in a recorded instrument and after giving notice in a
20 record to all the unit owners, voluntarily surrenders all rights to
21 control the activities of the association.
- 22
- 23 46:8E-37. Termination following catastrophe.
- 24 If substantially all the units in a common interest community
25 have been destroyed or are uninhabitable and the available methods
26 for giving notice of a meeting of unit owners to consider
27 termination under N.J.S.46:8E-31 are unlikely to provide adequate
28 notice, the executive board or any other interested person may
29 commence an action seeking to terminate the common interest
30 community. During the pendency of the action, the court may issue
31 whatever orders it considers appropriate, including appointment of a
32 receiver. After a hearing, the court may terminate the common
33 interest community or reduce its size and may issue any other order
34 the court considers to be in the best interest of the unit owners and
35 persons holding an interest in the common interest community.
- 36 The payment of proceeds of any sale or other disposition of the
37 property in a common interest community shall be as follows:
- 38 a. On termination of the common interest community,
39 proceeds, after payment of valid liens, shall be paid to unit owners
40 in proportion to the fair market value immediately before
41 termination of their units including the value of allocated interests
42 and limited common elements;
- 43 b. Following termination of a condominium or planned
44 community, creditors of the association holding liens on the units,
45 which were docketed before termination, may enforce those liens in
46 the same manner as any lien holder. Any other creditor of the
47 association shall be treated as if the creditor had perfected a lien on
48 the units immediately before termination;

1 c. In a cooperative, a declaration may provide that all creditors
2 of the association shall have priority over any interests of unit
3 owners and creditors of unit owners. In that event, following
4 termination, creditors of the association holding liens on the
5 cooperative which were docketed before termination may enforce
6 their liens in the same manner as any lien holder. Any other
7 creditor of the association shall be treated as if the creditor had
8 perfected a lien against the cooperative immediately before
9 termination. Unless the declaration provides that all creditors of the
10 association have that priority:

11 (1) the lien of each creditor of the association which was
12 perfected against the association before termination shall become,
13 upon termination, a lien against each unit owner's interest in the
14 unit as of the date the lien was perfected;

15 (2) any other creditor of the association shall be treated upon
16 termination as if the creditor had perfected a lien against each unit
17 owner's interest immediately before termination;

18 (3) the amount of the lien of an association's creditor described
19 in paragraphs (1) and (2) against each of the unit owners' interest
20 shall be proportionate to the ratio which each unit's common
21 expense liability bears to the common expense liability of all of the
22 units;

23 (4) the lien of each creditor of each unit owner which was
24 perfected before termination shall continue as a lien against that
25 unit owner's unit as of the date the lien was perfected;

26 (5) the assets of the association shall be distributed to all unit
27 owners and all lien holders as their interests may appear in the order
28 described in this subsection; and

29 (6) creditors of the association shall not be entitled to payment
30 from a unit owner in excess of the amount of the creditor's lien
31 against that unit owner's interest.

32

33 2. The following sections are repealed:

34 Sections 4 through 6 of P.L.1969, c.257 (C.46:8B-4 through
35 C.46:8B-6);

36 Section 8 of P.L.1969, c.257 (C.46:8B-8);

37 Section 3 of P.L.1973, c.216 (C.46:8B-8.1);

38 Sections 9 through 11 of P.L.1969, c.257 (C.46:8B-9 through
39 C.46:8B-11);

40 Section 19 of P.L.1969, c.257 (C.46:8B-19);

41 Sections 25 through 29 of P.L.1969, c.257 (C.46:8B-25 through
42 C.46:8B-29);

43 P.L.1987, c.381 (C.46:8D-1 through C.46:8D-13 and C.46:8D-14
44 through C.46:8D-18).

45

46 3. Notwithstanding the repeal of various sections of law pursuant
47 to section 2 of P.L. , c. (C.) (pending before the Legislature as
48 this bill):

b. P.L. , c. (C.) (pending before the Legislature as this bill) shall not affect any complaint or other pleading filed in a court of competent jurisdiction or appeal of real estate taxes filed prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), which shall continue to be controlled by those acts in effect prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill);

d. No cooperative created prior to the effective date of the "The Cooperative Recording Act of New Jersey," P.L.1987, c.381 (C.46:8D-1 et al.) shall be required by P.L. , c. (C.) (pending before the Legislature as this bill) to record a transfer of a cooperative unit.

STATEMENT

The bill would also address a lack of guidance in existing law concerning the treatment of common property for property tax purposes through the addition of language intended to avoid situations in which a homeowner is made responsible for the value of common elements both through the reflection of the value in the owner's property tax bill, and indirectly through association dues.

Additionally, the bill would require a community's master deed to contain clear and legible plans that offer more detail regarding the

1 boundaries of dwellings and common elements than is required by
2 existing law.

3 The bill would repeal "The Cooperative Recording Act of New
4 Jersey," P.L.1987, c.381 (C.46:8D-1 et al.), and certain sections of the
5 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), which are
6 obviated by the bill.

7 The bill establishes a new chapter within Title 46 of the Revised
8 Statutes, chapter 8E, and provides for the coordination between this
9 new chapter and other statutes.