

SENATE, No. 2261

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:
Senator TROY SINGLETON
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
47 46:8E-5. Applicability of local ordinances, regulations and
48 building codes.

1 a. A local unit shall not impose a code requirement upon any
2 structure in a common interest community that differs from a code
3 requirement imposed upon an equivalent structure under a different
4 form of ownership.

5 b. In condominiums and cooperatives, no zoning, subdivision,
6 or other real estate use law, ordinance, or regulation may prohibit
7 the condominium or cooperative form of ownership or impose any
8 requirement upon a condominium or cooperative which it would not
9 impose upon a physically identical development under a different
10 form of ownership.

11 c. Except as provided in subsections a. and b. of this section,
12 the provisions of this chapter shall not invalidate or modify any
13 provision of any building code, zoning, subdivision, or other real
14 estate use law, ordinance, or rule, or regulation governing the use of
15 real estate.

16

17 46:8E-6. Eminent domain.

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

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

45 c. If part of the common elements is acquired by eminent
46 domain, the portion of the award attributable to the common
47 elements taken shall be paid to the association. Unless the
48 declaration provides otherwise, any portion of the award

1 attributable to the acquisition of a limited common element shall be
2 divided among the owners of the units to which that limited
3 common element was allocated at the time of acquisition in
4 proportion to their rights in the limited common elements.

5 d. The Declaration of Taking or other document evidencing a
6 transfer of title to the condemning authority shall be recorded in
7 every county in which any portion of the common interest
8 community is located.

9
10 46:8E-7. Supplemental general principles of law applicable.

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

19
20 46:8E-8. Construction against implicit repeal.

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

25
26 46:8E-9. Severability.

27 If any provision of this chapter or the application thereof to any
28 person or circumstance is held invalid, the invalidity shall not affect
29 other provisions or applications of this chapter which can be given
30 effect without the invalid provisions or application, and to this end
31 the provisions of this chapter are severable.

32
33 46:8E-10. Obligation of good faith.

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

36
37 46:8E-11. Remedies to be liberally administered.

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

41
42 46:8E-12. Relation to Electronic Signatures in Global and
43 National Commerce Act.

44 This chapter shall modify, limit, and supersede the federal
45 “Electronic Signatures in Global and National Commerce Act,” 15
46 U.S.C. s.7001, et seq., but do not modify, limit, or supersede
47 s.101(c) of that act, 15 U.S.C. s.7001(c), or authorize electronic

1 delivery of any of the notices described in s.103(b) of that act, 15
2 U.S.C. s.7003(b).

3
4 46:8E-13. Applicability to common interest communities.

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

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

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

12 d. This chapter shall not alter the rights and responsibilities of
13 declarants of common interest communities established before the
14 effective date of this chapter.

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

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

30
31 ARTICLE 2

32 CREATION, ALTERATION, AND TERMINATION OF
33 COMMON INTEREST COMMUNITIES
34

35 46:8E-14. Creation of common interest communities.

36 A common interest community may be created pursuant to this
37 chapter only by a declaration executed in the same manner as a
38 deed. The declaration shall be recorded in every county in which
39 any portion of the common interest community is located and shall
40 be indexed treating the common interest community as the grantee
41 and each person executing the declaration as the grantors.

42
43 46:8E-15. Unit boundaries.

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

46 a. If walls, floors, or ceilings are designated as boundaries of a
47 unit, all lath, furring, wallboard, plasterboard, plaster, paneling,
48 tiles, wallpaper, paint, finished flooring, and any other materials

1 constituting any part of the finished surfaces thereof shall be a part
2 of the unit, and all other portions of the walls, floors, or ceilings
3 shall be a part of the common elements.

4 b. If any chute, flue, duct, wire, conduit, bearing wall, bearing
5 column, or any other fixture lies partially within and partially
6 outside the designated boundaries of a unit, any portion thereof
7 serving only that unit shall be a limited common element allocated
8 solely to that unit, and any portion thereof serving more than one
9 unit or any portion of the common elements shall be a part of the
10 common elements.

11 c. Subject to subsection b. of this section, all spaces, interior
12 partitions, and other fixtures and improvements within the
13 boundaries of a unit and all exterior doors and windows shall be a
14 part of the unit.

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

19

20 46:8E-16. Construction and validity of declaration and bylaws.

21 a. All provisions of the declaration and bylaws shall be
22 severable.

23 b. If a conflict exists between the declaration and the bylaws, the
24 declaration shall prevail except to the extent the declaration is
25 inconsistent with this chapter.

26 c. Title to a unit and common elements shall not be rendered
27 unmarketable or otherwise be affected by reason of an insubstantial
28 failure of the declaration to comply with this chapter. Whether a
29 substantial failure impairs marketability is not affected by this
30 chapter.

31

32 46:8E-17. Description of units.

33 A description of a unit which sets forth the name of the common
34 interest community, the recording data for the declaration, and the
35 identifying number of the unit, shall be a legally sufficient
36 description of that unit and all rights, obligations, and interests
37 appurtenant to that unit which were created by the declaration or
38 bylaws.

39

40 46:8E-18. Contents of declaration.

41 a. The declaration shall contain:

42 (1) the names of the common interest community and the
43 association and a statement that the common interest community is
44 either a condominium, cooperative, or planned community;

45 (2) the name of every county in which any part of the common
46 interest community is situated;

47 (3) a legally sufficient description of the real estate included in
48 the common interest community;

1 (4) a statement of the maximum number of units that the
2 declarant reserves the right to create;

3 (5) in a condominium or planned community, a description of
4 the boundaries of each unit created by the declaration, including the
5 unit's identifying number or, in a cooperative, a description, which
6 may be by plats or plans, of each unit created by the declaration,
7 including the unit's identifying number, its size or number of
8 rooms, and its location within a building if it is within a building
9 containing more than one unit;

10 (6) a description of any limited common elements, other than
11 those specified in subsections b. and d. of N.J.S.46:8E-15, as
12 provided in paragraph (10) of subsection b. of N.J.S.46:8E-22 and,
13 in a planned community, any real estate that is or shall become
14 common elements;

15 (7) a description of any real estate, except real estate subject to
16 development rights, that may be allocated subsequently as limited
17 common elements, other than limited common elements specified in
18 subsections b. and d. of N.J.S.46:8E-15, together with a statement
19 that they may be so allocated;

20 (8) a description of any development right and other special
21 declarant rights reserved by the declarant, together with a legally
22 sufficient description of the real estate to which each of those rights
23 applies, and a time limit within which each of those rights shall be
24 exercised;

25 (9) if any development right may be exercised with respect to
26 different parcels of real estate at different times, a statement to that
27 effect together with:

28 (a) either a statement fixing the boundaries of those portions and
29 regulating the order in which those portions may be subjected to the
30 exercise of each development right or a statement that no
31 assurances are made in those regards; and

32 (b) a statement as to whether, if any development right is
33 exercised in any portion of the real estate subject to that
34 development right, that development right shall be exercised in all
35 or in any other portion of the remainder of that real estate;

36 (10) any other conditions or limitations under which the rights
37 described in paragraph (8) of this subsection may be exercised or
38 lapse;

39 (11) an allocation to each unit of the allocated interests in the
40 manner described in N.J.S.46:8E-20;

41 (12) any restrictions on alienation of the units, including any
42 restrictions on leasing which exceed the restrictions on leasing units
43 which executive boards may impose and on the amount for which a
44 unit may be sold or on the amount that may be received by a unit
45 owner on sale, condemnation, or casualty loss to the unit or to the
46 common interest community, or on termination of the common
47 interest community;

1 (13) the recording data for recorded easements and licenses
2 appurtenant to or included in the common interest community or to
3 which any portion of the common interest community is or may
4 become subject by virtue of a reservation in the declaration;

5 (14) any authorization pursuant to which the association may
6 establish and enforce construction and design criteria and aesthetic
7 standards;

8 (15) Provisions concerning reserves that:

9 (a) mandate that the association create and maintain reserves for
10 the replacement or repair of the common elements, together with a
11 statement of the basis on which those reserves are to be calculated
12 and funded; or

13 (b) allow that the association may, but is not required to, create
14 and maintain reserves;

15 (16) the bylaws; and

16 (17) all matters required by N.J.S.46:8E-19 through -22, and
17 N.J.S.46:8E-28 through -31.

18 b. The declaration may contain any other matters the declarant
19 considers appropriate, including any restrictions on the uses of a
20 unit or the number or other qualifications of persons who may
21 occupy units.

22

23 46:8E-19. Leasehold common interest communities.

24 a. Any lease the expiration or termination of which may
25 terminate the common interest community or reduce its size shall be
26 recorded. Every lessor of those leases in a condominium or planned
27 community shall sign the declaration. The declaration shall state:

28 (1) the recording data for the lease;

29 (2) the date on which the lease is scheduled to expire;

30 (3) a legally sufficient description of the real estate subject to
31 the lease;

32 (4) any right of the unit owners to redeem the reversion and the
33 manner whereby those rights may be exercised, or a statement that
34 they do not have those rights;

35 (5) any right of the unit owners to remove any improvements
36 within a reasonable time after the expiration or termination of the
37 lease, or a statement that they do not have those rights; and

38 (6) any rights of the unit owners to renew the lease and the
39 conditions of any renewal, or a statement that they do not have
40 those rights.

41 b. After the declaration for a leasehold condominium or
42 leasehold planned community is recorded, neither the lessor nor the
43 lessor's successor in interest may terminate the leasehold interest of
44 a unit owner who makes timely payment of a unit owner's share of
45 the rent and otherwise complies with all covenants which, if
46 violated, would entitle the lessor to terminate the lease. A unit
47 owner's leasehold interest in a condominium or planned community

1 is not affected by failure of any other person to pay rent or fulfill
2 any other covenant.

3 c. Acquisition of the leasehold interest of any unit owner by
4 the owner of the reversion or remainder does not merge the
5 leasehold and fee simple interests unless the leasehold interests of
6 all unit owners subject to that reversion or remainder are acquired.

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

13

14 46:8E-20. Allocation of allocated interests.

15 a. The declaration shall allocate to each unit:

16 (1) in a condominium, a fraction or percentage of undivided
17 interests in the common elements and in the common expenses of
18 the association, and a portion of the votes in the association;

19 (2) in a cooperative, an ownership interest in the association, a
20 fraction or percentage of the common expenses of the association,
21 and a portion of the votes in the association; and

22 (3) in a planned community, a fraction or percentage of the
23 common expenses of the association, and a portion of the votes in
24 the association.

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

28 c. If units shall be added to or withdrawn from the common
29 interest community, the declaration shall state the formulas to be
30 used to reallocate the allocated interests among all units included in
31 the common interest community after the addition or withdrawal.

32 d. The declaration shall provide:

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

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

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

42 e. Except for minor variations due to rounding, the sum of the
43 common expense liabilities and, in a condominium, the sum of the
44 undivided interests in the common elements allocated at any time to
45 all the units shall each equal one if stated as a fraction or 100
46 percent if stated as a percentage. In the event of discrepancy
47 between an allocated interest and the result derived from application
48 of the pertinent formula, the allocated interest prevails.

1 f. In a condominium, the common elements shall not be
2 subject to partition. Any purported conveyance, encumbrance,
3 judicial sale, or other voluntary or involuntary transfer of an
4 undivided interest in the common elements made without the unit to
5 which that interest is allocated shall be void.

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

10

11 46:8E-21. Limited common elements.

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

17 b. Except as the declaration otherwise provides, a limited
18 common element may be reallocated by an amendment to the
19 declaration executed by the unit owners between or among whose
20 units the reallocation is made. The persons executing the
21 amendment shall provide a copy thereof to the association, which
22 shall record it. The amendment shall be recorded in the names of
23 the parties and the common interest community.

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

29

30 46:8E-22. Plats and plans.

31 a. Plats and plans shall be a part of a declaration, and shall be
32 required for all common interest communities except cooperatives.
33 Separate plats and plans are not required by this chapter if all the
34 information required by this section is contained in either a plat or
35 plan. Each plat and plan shall be clear and legible and contain a
36 certification that the plat or plan contains all information required
37 by this section.

38 b. Each plat shall show or project:

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

41 (2) the location and dimensions of all real estate not subject to
42 development rights, or subject only to the development right to
43 withdraw, and the location and dimensions of all existing
44 improvements within that real estate;

45 (3) a legally sufficient description of any real estate subject to
46 development rights, labeled to identify the rights applicable to each
47 parcel, but plats and plans need not designate or label which

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

1 f. Upon exercising any development right, the declarant shall
2 record either new plats and plans necessary to conform to the
3 requirements of subsections a., b., and d. of this section, or new
4 certifications of plats and plans previously recorded if those plats
5 and plans otherwise conform to the requirements of those
6 subsections.

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

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

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

16 (2) the declaration includes other information that shows or
17 contains a narrative description of the general layout of the units in
18 those buildings and the limited common elements allocated to those
19 units.

20

21 46:8E-23. Exercise of development rights.

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

35 b. Development rights may be reserved within any real estate
36 added to the common interest community if the amendment adding
37 that real estate includes all matters required by N.J.S.46:8E-18 or
38 N.J.S.46:8E-19, as the case may be, and, in a condominium or
39 planned community, the plats and plans include all matters required
40 by N.J.S.46:8E-22. This provision does not extend the time limit on
41 the exercise of development rights imposed by the declaration
42 pursuant to paragraph (8) of subsection a. of N.J.S.46:8E-18.

43 c. Whenever a declarant exercises a development right to
44 subdivide or convert a unit previously created into additional units,
45 common elements, or both:

46 (1) if the declarant converts the unit entirely to common
47 elements, the amendment to the declaration shall, pursuant to
48 N.J.S.46:8E-6, reallocate all the allocated interests of that unit

1 among the other units as if that unit had been taken by eminent
2 domain; and

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

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

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

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

18

19 46:8E-24. Alterations of units.

20 Subject to the provisions of the declaration and other provisions
21 of law, a unit owner:

22 a. may make any improvements or alterations to the owner's
23 unit that do not impair the structural integrity or mechanical
24 systems or lessen the support of any portion of the common interest
25 community;

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

28 c. may not change the appearance of the common elements or
29 other portion of the common interest community, without the
30 permission of the association;

31 d. in a planned community or part of a common interest
32 community without adjoining units, where the units were constructed
33 pursuant to a common architectural scheme or design, or contained
34 restrictions in the declaration or bylaws limiting the units to certain
35 colors or design schemes, the exterior appearance of a unit may not be
36 changed without permission of the association;

37 e. after acquiring an adjoining unit or an adjoining part of an
38 adjoining unit, may remove or alter any intervening partition or
39 create apertures therein, even if the partition in whole or in part is a
40 common element, if those acts do not impair the structural integrity
41 or mechanical systems or lessen the support of any portion of the
42 common interest community. Removal of partitions or creation of
43 apertures under this paragraph shall not be an alteration of
44 boundaries.

45

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

47 a. Subject to the provisions of the declaration and other
48 provisions of law, the boundaries between adjoining units may be

1 relocated by an amendment to the declaration upon application to
2 the association by the owners of those units. If the owners of the
3 adjoining units have specified a reallocation between their units of
4 their allocated interests, the application shall state the proposed
5 reallocations. Unless the executive board determines, within 30
6 days, that the reallocations are unreasonable, the association shall
7 prepare an amendment that identifies the units involved and states
8 the reallocations. The amendment shall be executed by those unit
9 owners, contain words of conveyance between them, and, on
10 recordation, be indexed in the name of the grantor and the grantee,
11 and in the name of the association.

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

29 c. The association (1) in a condominium or planned community
30 shall prepare and record plats or plans necessary to show the altered
31 boundaries of affected units, and their dimensions and identifying
32 numbers, and (2) in a cooperative shall prepare and record
33 amendments to the declaration, including any plans necessary to
34 show or describe the altered boundaries of affected units, and their
35 dimensions and identifying numbers.

36

37 46:8E-26. Subdivision of units.

38 a. If the declaration expressly so permits, a unit may be
39 subdivided into two or more units. Subject to the declaration and
40 law other than this chapter, upon application of a unit owner to
41 subdivide a unit, the association shall prepare, execute, and record
42 an amendment to the declaration including, in a condominium or
43 planned community, the plats and plans subdividing that unit.

44 b. The amendment to the declaration shall be executed by the
45 owner of the unit to be subdivided, assign an identifying number to
46 each unit created, and reallocate the allocated interests formerly
47 allocated to the subdivided unit to the new units in any reasonable

1 manner prescribed by the owner of the subdivided unit or on any
2 other basis the declaration requires.

3

4 46:8E-27. Monuments as boundaries.

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

17

18 46:8E-28. Use for sales purposes.

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

34

35 46:8E-29. Easement and use rights.

36 a. Subject to the declaration, a declarant shall have an
37 easement through the common elements as may be reasonably
38 necessary for the purpose of discharging the declarant's obligations
39 or exercising special declarant rights, whether arising under this
40 chapter, or reserved in the declaration.

41 b. Subject to the declaration, or provisions of the community
42 association rules or regulations on the use, maintenance, repair,
43 replacement, and modification of common elements the unit owners
44 shall have an easement in the common elements for access to their
45 units.

46 c. Subject to the declaration and rules, the unit owners shall
47 have a right to use the common elements that are not limited

1 common elements and all real estate that shall become common
2 elements for the purposes for which they were intended.

3
4 46:8E-30. Amendment of declaration.

5 a. (1) Subject to the declaration, the declaration, including any
6 plats and plans, may be amended only by vote or agreement of
7 votes representing at least 67 percent of the allocated votes present
8 in person, by proxy, absentee ballot or electronic ballot where the
9 quorum shall not be less than 50 percent of the allocated votes in
10 the association qualified to vote.

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

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

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

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

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

23 b. Notwithstanding any provision of section 4 of P.L.1993, c.30
24 (C.45:22A-46) to the contrary, with respect to any common interest
25 community created after the effective date of this chapter, within 24
26 months following the earlier of the conveyance of title to the last unit
27 in the common interest community or, except where the declaration
28 provides that the common interest community may consist of more
29 than 750 units, 10 years following the sale of the first unit in the
30 common interest community, the executive board shall re-examine
31 the bylaws, declaration and rules of the association and present
32 proposed amendments as the executive board may deem
33 appropriate, as well as amendments proposed by initiative signed by
34 persons eligible to cast at least 20 percent of the votes, for approval
35 by vote of the unit owners. Any proposed amendment shall be
36 unambiguous and consistent with applicable law and with the
37 provisions of the governing documents that are not proposed to be
38 amended. Notwithstanding the terms of a declaration or bylaws, an
39 amendment to an existing bylaw, rule, or declaration, and subject to
40 the limitations expressed in subsection c. of this section, an
41 amendment may be adopted by the lesser of: (1) a majority of the
42 voting interest in the association; or (2) 67 percent of the voting
43 interest actually cast, provided not less than a majority of the
44 eligible votes have been cast. At least 30 days advance notice of
45 any referendum, including the text of any new bylaw or amendment
46 or repeal of an existing provision to be voted on, shall be given to
47 all unit owners by registered or certified mail, by personal delivery,
48 or where the unit owner consents, by electronic communication.

- 1 c. (1) A proposed amendment shall not reduce the boundaries
2 of a unit or the unit's limited common elements without consent of
3 that unit owner.
- 4 (2) A proposed amendment shall not violate a clear mandate of
5 public policy.
- 6 (3) A proposed amendment that seeks to prohibit a previously
7 permitted use of a unit shall provide reasonable protection for a use
8 or occupancy permitted at the time the amendment was adopted.
9 An amendment that seeks to prohibit a previously permitted use in a
10 unit, shall require approval by a vote of at least 67 percent of the
11 total allocated votes in the association.
- 12 (4) Except to the extent expressly permitted or required by other
13 provisions of this chapter, an amendment shall not create or
14 increase special declarant rights, or except as permitted by the
15 declaration increase the number of units or change the boundaries
16 of any unit or the allocated interests of a unit in the absence of
17 unanimous consent of the unit owners.
- 18 (5) The time limits specified in a declaration within which a
19 declarant's reserved development rights may be exercised, and
20 within which additional development rights may be created, shall be
21 extended only if at least 80 percent of the votes in the association,
22 including 80 percent of the votes allocated to units not owned by
23 the declarant, agree to that action.
- 24 d. An action to challenge the validity of an amendment adopted
25 by an association pursuant to this section, other than an action by a
26 governmental official or entity authorized to do so by statute or
27 regulation adopted pursuant to statute, shall not be brought more
28 than one year after the amendment is recorded.
- 29 e. An amendment to a declaration shall be recorded in every
30 county in which any portion of the common interest community is
31 located and shall be effective only upon recordation. An
32 amendment, except an amendment pursuant to subsection a. of
33 N.J.S.46:8E-25, shall be indexed in the name of the common
34 interest community and the association as grantees and in the name
35 of the parties executing the amendment as grantors. Amendments
36 to the declaration required to be recorded by the association shall be
37 prepared, executed, recorded, and certified on behalf of the
38 association by any officer of the association designated for that
39 purpose or, in the absence of designation, by the president of the
40 association.
- 41 f. If the declaration of a common interest community, whether
42 created before or after the effective date of P.L. c. (N.J.S.)
43 (pending before the Legislature as this bill), requires the consent of
44 a person holding a security interest in a unit as a condition to the
45 effectiveness of an amendment to the declaration, that consent shall
46 be granted if no written refusal to consent is received by the
47 association within 60 days after the association delivers notice of
48 the proposed amendment to the holder of the security interest or

1 mails the notice to the holder of the security interest by certified
2 mail, return receipt requested. The association may rely on the last-
3 recorded security interest of record in delivering or mailing notice
4 to the holder of that interest.

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

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

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

16 (c) notice of the proposed amendment is delivered to the unit
17 owners holding the votes in the association that have not voted or
18 agreed to the proposed amendment and no written objection to the
19 proposed amendment is received by the association within 30 days
20 after the association delivers notice; or

21 (2) Unit owners of units to which at least 80 percent of the votes
22 in the association are allocated vote for or agree to the proposed
23 amendment, but at least one unit owner objects to the proposed
24 amendment and, pursuant to an action brought by the association in
25 the Superior Court against all objecting unit owners, the court finds
26 that the objecting unit owners do not have a unique minority
27 interest, different in kind from the interests of the unit owners, that
28 the voting requirement of the declaration is intended to protect.

29
30 46:8E-31. Termination of common interest community.

31 a. Except for a taking of all the units by eminent domain,
32 foreclosure against an entire cooperative of a security interest that
33 has priority over the declaration, or in the circumstances described
34 in N.J.S.46:8E-37, a common interest community may be
35 terminated, or a portion of the common interest community may be
36 removed from the common interest community, only by agreement of
37 unit owners of units to which at least 80 percent of the votes in the
38 association are allocated, or any larger percentage the declaration
39 specifies, and with any other approvals required by the declaration.
40 The declaration may specify a smaller percentage only if all of the
41 units are restricted exclusively to nonresidential uses.

42 b. An agreement to terminate shall be evidenced by the
43 execution of a termination agreement, or ratifications of the
44 agreement, in the same manner as a deed, by the requisite number
45 of unit owners. A termination agreement and all ratifications of it
46 shall be recorded in every county in which a portion of the common
47 interest community is situated and shall be effective only upon
48 recordation.

1 c. Except as provided in subsection d. of this section, a
2 termination agreement shall provide that all of the common
3 elements and units of the common interest community shall be sold
4 following termination and shall set forth the minimum terms of the
5 sale.

6 d. If a unit meets zoning and planning requirements as an
7 independent parcel of real estate at the time of termination, a
8 termination agreement shall provide that the owner may retain
9 ownership of that unit.

10 e. An association, on behalf of the unit owners, may contract
11 for the sale of real estate in a common interest community, but the
12 contract shall not be binding on the unit owners until approved
13 pursuant to subsection a. of this section. Upon termination, the
14 assets of the association, title to real estate and proceeds shall vest
15 in the association as trustee for the holders of all interests in the
16 units. Until a sale has been concluded and the proceeds distributed,
17 the association shall continue in existence with all powers it had
18 before termination.

19 f. On termination of the common interest community,
20 proceeds, after payment of valid liens, shall be paid to unit owners
21 in proportion to the fair market value immediately before
22 termination of their units including the value of allocated interests
23 and limited common elements.

24 g. Following termination of a condominium or planned
25 community, creditors of the association holding liens on the units,
26 which were docketed before termination, may enforce those liens in
27 the same manner as any lien holder. Any other creditor of the
28 association shall be treated as if the creditor had perfected a lien on
29 the units immediately before termination.

30 h. In a cooperative, a declaration may provide that all creditors
31 of the association shall have priority over any interests of unit
32 owners and creditors of unit owners. In that event, following
33 termination, creditors of the association holding liens on the
34 cooperative which were docketed before termination may enforce
35 their liens in the same manner as any lien holder. Any other
36 creditor of the association shall be treated as if the creditor had
37 perfected a lien against the cooperative immediately before
38 termination. Unless the declaration provides that all creditors of the
39 association have that priority:

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

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

47 (3) the amount of the lien of an association's creditor described
48 in paragraphs (1) and (2) against each of the unit owners' interest

1 shall be proportionate to the ratio which each unit's common
2 expense liability bears to the common expense liability of all of the
3 units;

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

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

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

13 i. In a condominium or planned community, except as
14 otherwise provided in paragraph (l) of subsection h. of this section,
15 foreclosure or enforcement of a lien or encumbrance against the
16 entire common interest community shall not terminate, of itself, the
17 common interest community, and foreclosure or enforcement of a
18 lien or encumbrance against a portion of the common interest
19 community, other than withdrawable real estate, shall not withdraw
20 that portion from the common interest community. Foreclosure or
21 enforcement of a lien or encumbrance against withdrawable real
22 estate, or against common elements that have been subjected to a
23 security interest by the association, shall not withdraw, of itself,
24 that real estate from the common interest community, but the person
25 taking title thereto may require from the association, upon request,
26 an amendment excluding the real estate from the common interest
27 community.

28 j. In a condominium or planned community, if a lien or
29 encumbrance against a portion of the real estate comprising the
30 common interest community has priority over the declaration and
31 the lien or encumbrance has not been partially released, the parties
32 foreclosing the lien or encumbrance, upon foreclosure, may record
33 an instrument excluding the real estate subject to that lien or
34 encumbrance from the common interest community.

35

36 46:8E-32. Rights of secured lenders.

37 a. The declaration may require that all or a specified number or
38 percentage of the lenders who hold security interests encumbering
39 units, or who have extended credit to the association, approve
40 specified actions of the unit owners or the association as a condition
41 to the effectiveness of those actions, but no requirement for
42 approval may operate to:

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

45 (2) prevent the association or the executive board from
46 commencing, intervening in, or settling any litigation or
47 proceeding, or

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

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

13
14 46:8E-33. Master associations.

15 a. If the declaration provides that any of the powers of the unit
16 owners association, also referred to as the association under this
17 chapter, are to be exercised by or may be delegated to a profit or
18 nonprofit corporation that exercises those or other powers on behalf
19 of one or more common interest communities or for the benefit of
20 the unit owners of one or more common interest communities, all
21 provisions of this chapter applicable to unit owners' associations
22 shall apply to any such corporation or unincorporated association,
23 except as modified by this section.

24 b. Unless it is acting in the capacity of an unit owners
25 association, a master association may exercise powers over budgets
26 and finances only to the extent expressly permitted in the
27 declarations of the common interest communities that are part of the
28 master association or expressly described in the delegations of
29 power from those common interest communities to the master
30 association.

31 c. If the declaration of any common interest community
32 provides that the executive board may delegate certain powers to a
33 master association, the members of the executive board shall not be
34 liable for the acts or omissions of the master association with
35 respect to those powers following delegation.

36 d. The rights and responsibilities of unit owners with respect to
37 the unit owners' association shall apply in the conduct of the affairs
38 of a master association only to persons who elect the board of a
39 master association, whether or not those persons are otherwise unit
40 owners within the meaning of this chapter.

41 e. Even if a master association is also a unit owners
42 association, the certificate of incorporation or other instrument
43 creating the master association and the declaration of each common
44 interest community, the powers of which are assigned by the
45 declaration or delegated to the master association, may provide that
46 the executive board of the master association shall be elected after
47 the period of declarant control in any of the following ways:

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

4 (2) All members of the executive boards of all common interest
5 communities subject to the master association may elect all
6 members of the master association's executive board.

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

10 (4) All members of the executive board of each common interest
11 community subject to the master association may elect specified
12 members of the master association's executive board.

13

14 46:8E-34. Merger or consolidation of common interest
15 communities.

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

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

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

40 (1) by stating the reallocations or the formulas upon which they
41 are based, or

42 (2) by stating the percentage of overall allocated interests of the
43 new common interest community which are allocated to all of the
44 units comprising each of the pre-existing common interest
45 communities, and providing that the portion of the percentages
46 allocated to each unit formerly comprising a part of the pre-existing
47 common interest community shall be equal to the percentages of

1 allocated interests allocated to that unit by the declaration of the
2 pre-existing common interest community.

3

4 46:8E-35. Addition of unspecified real estate.

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

18

19 46:8E-36. Master planned communities.

20 a. The declaration for a common interest community may state
21 that it is a master planned community if the declarant has reserved
22 the development right to create at least 300 units that may be used
23 for residential purposes and has obtained preliminary site plan or
24 subdivision approval permitting the declarant to construct at least
25 300 residential units pursuant to the "Municipal Land Use Law,"
26 P.L.1975, c.291 (C.40:55D-1 et seq.).

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

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

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

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

40 d. Notwithstanding any other provision of this chapter:

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

43 (a) units that have been declared or which are being offered for
44 sale; and

45 (b) real estate described pursuant to subsection c. of this section;

46 (2) other real estate that is or may become part of the master
47 planned community shall be subject only to other applicable laws

1 and to any other restrictions and limitations that appear of record;
2 and

3 (3) if the public offering statement conspicuously identifies the
4 community as a master planned community, the disclosure
5 requirements shall apply only with respect to units that have been
6 declared or are being offered for sale in connection with the public
7 offering statement and to the real estate described in subsection c.
8 of this section.

9 e. Limitations in this chapter on the addition of unspecified
10 real estate shall not apply to a master planned community.

11 f. The period of declarant control of the association for a
12 master planned community shall terminate in accordance with
13 conditions specified in the declaration or otherwise at the time the
14 declarant, in a recorded instrument and after giving notice in a
15 record to all the unit owners, voluntarily surrenders all rights to
16 control the activities of the association.

17

18 46:8E-37. Termination following catastrophe.

19 If substantially all the units in a common interest community
20 have been destroyed or are uninhabitable and the available methods
21 for giving notice of a meeting of unit owners to consider
22 termination under N.J.S.46:8E-31 are unlikely to provide adequate
23 notice, the executive board or any other interested person may
24 commence an action seeking to terminate the common interest
25 community. During the pendency of the action, the court may issue
26 whatever orders it considers appropriate, including appointment of a
27 receiver. After a hearing, the court may terminate the common
28 interest community or reduce its size and may issue any other order
29 the court considers to be in the best interest of the unit owners and
30 persons holding an interest in the common interest community.

31 The payment of proceeds of any sale or other disposition of the
32 property in a common interest community shall be as follows:

33 a. On termination of the common interest community,
34 proceeds, after payment of valid liens, shall be paid to unit owners
35 in proportion to the fair market value immediately before
36 termination of their units including the value of allocated interests
37 and limited common elements;

38 b. Following termination of a condominium or planned
39 community, creditors of the association holding liens on the units,
40 which were docketed before termination, may enforce those liens in
41 the same manner as any lien holder. Any other creditor of the
42 association shall be treated as if the creditor had perfected a lien on
43 the units immediately before termination;

44 c. In a cooperative, a declaration may provide that all creditors
45 of the association shall have priority over any interests of unit
46 owners and creditors of unit owners. In that event, following
47 termination, creditors of the association holding liens on the
48 cooperative which were docketed before termination may enforce

1 their liens in the same manner as any lien holder. Any other
2 creditor of the association shall be treated as if the creditor had
3 perfected a lien against the cooperative immediately before
4 termination. Unless the declaration provides that all creditors of the
5 association have that priority:

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

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

13 (3) the amount of the lien of an association's creditor described
14 in paragraphs (1) and (2) against each of the unit owners' interest
15 shall be proportionate to the ratio which each unit's common
16 expense liability bears to the common expense liability of all of the
17 units;

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

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

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

27
28 2. The following sections are repealed:

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

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

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

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

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

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

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

40
41 3. Notwithstanding the repeal of various sections of law pursuant
42 to section 2 of P.L. , c. (C.) (pending before the Legislature as
43 this bill):

44 a. P.L. , c. (C.) (pending before the Legislature as this
45 bill) shall not affect the validity of any common interest community
46 created prior to the effective date of P.L. , c. (C.) (pending
47 before the Legislature as this bill);

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31

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

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