

ASSEMBLY, No. 3855

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MARCH 1, 2005

Sponsored by:

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

Assemblyman PETER J. BIONDI

District 16 (Morris and Somerset)

SYNOPSIS

"New Jersey Uniform Common Interest Ownership Act."

CURRENT VERSION OF TEXT

As introduced.



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

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

7
8 ARTICLE 1.
9 IN GENERAL

10
11 1. (New section) This act shall be known and may be cited as the
12 "New Jersey Uniform Common Interest Ownership Act."

13
14 2. (New section) The Legislature finds and declares:

15 a. Associations that manage common interest communities provide
16 business, community and quasi-governmental services. The corporate
17 model utilized by most common interest community associations does
18 not fully recognize the quasi-governmental functions performed by
19 such associations. This issue was addressed in recommendations made
20 by the Assembly Task Force to Study Homeowners' Associations in its
21 1998 report.

22 b. Unit owners in common interest communities are entitled to:
23 participate in governing the community association by attending
24 meetings, serving on committees and standing for election; access
25 appropriate association books and records; live in a community where
26 the property is maintained according to established standards; receive
27 fair treatment regarding financial and other association obligations;
28 and have available and a fair and effective method of resolving
29 disputes.

30 c. Unit owners within a common interest community are
31 responsible for maintaining their property according to established
32 standards; voting in community elections and on other issues; paying
33 association assessments and charges on time; and ensuring that those
34 who reside in or visit their dwellings adhere to all rules and
35 regulations.

36 d. Members of governing boards have a responsibility to fulfill their
37 fiduciary duties to the community; exercise sound business judgment;
38 follow established management practices; balance the needs and
39 obligations of the community as a whole with those of individual
40 owners and residents; conduct open, fair and well publicized elections;
41 encourage input from residents on issues affecting them personally and
42 the community as a whole; conduct business in a transparent manner
43 when feasible and appropriate; allow owners access to appropriate

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 community records when requested; and provide complete and timely
2 disclosure of personal and financial conflicts of interest related to their
3 actions.

4 e. The laws of the State of New Jersey, as they currently exist, do
5 not uniformly apply to all forms of common interest ownership
6 communities, leading to disparate application of the law depending on
7 the form of ownership.

8 f. Accordingly, the Legislature finds it in the public interest that:

9 (1) associations and owners be required to comply with standards
10 and procedures that further the goals set forth above;

11 (2) a fair and efficient system for resolving disputes between
12 owners and associations be implemented; and

13 (3) a uniform framework for association law be established for all
14 forms of common interest ownership associations.

15

16 3. (New section) As used in P.L. , c. (C.) (pending before
17 the Legislature as this bill), unless specifically provided otherwise:

18 "Affiliate of a declarant" means any person who controls, is
19 controlled by or is under common control with a declarant.

20 A person "controls" a declarant if the person,

21 (1) is general partner, officer, director, or employer of the
22 declarant,

23 (2) directly or indirectly, or acting in concert with one or more
24 other persons or through one or more subsidiaries, owns, controls,
25 holds with power to vote, or holds proxies representing, more than 10
26 percent of the voting interest necessary to elect a majority of the
27 directors of the declarant, or

28 (3) has contributed more than 10 percent of the capital of the
29 declarant.

30 A person "is controlled by" a declarant if the declarant,

31 (1) is a general partner, officer, director, or employer of the person,

32 (2) directly or indirectly or acting in concert with one or more other
33 persons, or through one or more subsidiaries, owns, controls, holds
34 with power to vote, or holds proxies representing, more than 10
35 percent of the voting interest in the person,

36 (3) controls in any manner the election of a majority of the directors
37 of the person, or

38 (4) has contributed more than 10 percent of the capital of the
39 person.

40 Control does not exist if the powers described in this definition are
41 held solely as security for an obligation and are not exercised. A
42 lender acting primarily to obtain or protect a security interest and who
43 does not engage in active participation of the management of the
44 property, as defined in section 52 of P.L. , c. (C.) (pending
45 before the Legislature as this bill), is not an affiliate of a declarant.

46 "Allocated interests" means the following interest allocated to each

1 unit:

2 (1) in a condominium, the undivided interest in the common
3 elements, the common expense liability, and votes in the association;

4 (2) in a cooperative, the common expense liability and the
5 ownership interest and votes in the association; and

6 (3) in a planned community, the common expense liability and votes
7 in the association.

8 "Assigns" means any person to whom rights of a unit owner have
9 been validly transferred by lease, mortgage or otherwise.

10 "Association" or "unit owners' association" means the unit owners'
11 association organized under section 48 of P.L. , c. (C.)
12 (pending before the Legislature as this bill).

13 "Bylaws" means the governing regulations adopted under P.L. , c.
14 (C.) (pending before the Legislature as this bill), or any act
15 repealed by P.L. , c. (C.) (pending before the Legislature as
16 this bill), for the regulation or management of an association.

17 "'Commissioner" means the Commissioner of Community Affairs
18 unless otherwise specified.

19 "Common elements" means,

20 (1) in the case of a condominium or cooperative, all portions of the
21 common interest community other than the units;

22 (2) in a planned community, any real estate within a planned
23 community which is owned or leased by the association, other than a
24 unit; and

25 (3) in all common interest communities, any other interests in real
26 estate for the benefit of unit owners which are subject to the
27 declaration, and all other elements of any improvement necessary to
28 the existence, management, operation, maintenance, and safety of the
29 common interest community or normally in common use, including any
30 equipment or improvements necessary for fire safety, including, but
31 not limited to, sprinkler and alarm systems.

32 "Common expenses" means expenditures made by, or financial
33 liabilities of, the association, together with any allocations to reserves.

34 "Common expense liability" means the liability for common
35 expenses allocated to each unit pursuant to section 30 of P.L. , c.
36 (C.) (pending before the Legislature as this bill).

37 "Common interest community" and "common interest property"
38 mean real estate with respect to which a person, by virtue of
39 ownership of a unit, is obligated to pay for real estate taxes, insurance
40 premiums, maintenance, or improvement of other real estate described
41 in a declaration. For the purposes of this definition "ownership of a
42 unit" does not include holding a leasehold interest of less than 20 years
43 in a unit, including renewal options.

44 "Common receipts" means all income to an association, including
45 rent or other charges derived from leasing or licensing the use of the
46 common elements, funds collected from unit owners as common

1 expenses, fines or late fees, and receipts designated as common by the
2 provisions of the master deed, declaration or bylaws.

3 "Condominium" means a common interest community in which
4 portions of the real estate are designated for separate ownership and
5 the remainder of the real estate is designated for common ownership
6 solely by the owners of those portions. A common interest community
7 is not a condominium unless the undivided interests in the common
8 elements are vested in the unit owners.

9 "Conversion building" means a building that at any time before
10 creation of the common interest community was occupied wholly or
11 partially by persons other than purchasers and by persons who
12 occupied with the consent of purchasers.

13 "Cooperative" means a common interest community in which the
14 real estate is owned by an association, each of whose members is
15 entitled by virtue of ownership interest in the association to exclusive
16 possession of a unit.

17 "Customary association assessment" means an assessment payable
18 in periodic installments to the association for regular and usual
19 operating and common area expenses pursuant to the association's
20 annual budget. The customary association assessment shall not
21 include any late charges, fines, penalties, interest, or any fees or costs
22 for the collection or enforcement of the assessment or any lien arising
23 from the assessment, or any special assessment. The periodic
24 installments must be due no less frequently than quarter-annually and
25 the assessment, and any of its component parts given priority by this
26 subsection must be acceptable to the Federal National Mortgage
27 Association so as to not disqualify an otherwise superior mortgage
28 from purchase by the Federal National Mortgage Association as a first
29 mortgage.

30 "Dealer" means a person in the business of selling units for his own
31 account.

32 "Declarant" means any person or group of persons acting in concert
33 who,

34 (1) as part of a common promotional plan, offers to dispose of his
35 or its interest in a unit not previously disposed of, or

36 (2) reserves or succeeds to any special declarant right.

37 "Declaration" means any instruments, however designated, that
38 create a common interest community, including any amendments to
39 those instruments and including, in the case of condominiums, the
40 master deed creating the condominium.

41 "Department" means the Department of Community Affairs, unless
42 otherwise specified.

43 "Development rights" means any right or combination of rights
44 reserved by a declarant in the declaration to,

45 (1) add real estate to a common interest community;

46 (2) create units, common elements, or limited common elements

1 within a common interest community;

2 (3) subdivide units or convert units into common elements; or

3 (4) withdraw real estate from a common interest community.

4 "Dispose" or "disposition" mean a voluntary transfer to a purchaser
5 of any legal or equitable interest in a unit, but the terms do not include
6 the transfer or release of a security interest.

7 "Executive board" means the body, regardless of name, designated
8 in the declaration to act on behalf of the association.

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

11 "Leasehold common interest community" means a common interest
12 community in which all or a portion of the real estate is subject to a
13 lease, the expiration or termination of which will terminate the
14 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 subsection b.
17 or d. of section 25 of P.L. , c. (C.) (pending before the
18 Legislature as this bill) for the exclusive use of one or more, but fewer
19 than all, of the units.

20 "Master association" means an organization described in section 44
21 of P.L. , c. (C.) (pending before the Legislature as this bill),
22 whether or not it is also an association described in section 48 of
23 P.L. , c. (C.) (pending before the Legislature as this bill).

24 "Master deed" means a master deed recorded pursuant to law in
25 effect prior to the effective date of P.L. , c. (C.) (pending before
26 the Legislature as this bill) as an instrument to create a condominium.

27 "Offering" means every inducement, solicitation or attempt to
28 encourage a person to acquire an interest in a unit if undertaken for
29 gain or profit.

30 "Person" means an individual, corporation, business trust, estate,
31 trust, partnership, association, joint venture, government,
32 governmental subdivision or agency, or other legal or commercial
33 entity. In the case of a land trust, however, "person" means the
34 beneficiary of the trust rather than the trust or the trustee.

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

38 "Proprietary lease" means an agreement with an association
39 pursuant to which a member is entitled to exclusive possession of a
40 unit in a cooperative.

41 "Purchaser" means a person, other than a declarant or a dealer, who
42 by means of a voluntary transfer acquires a legal or equitable interest
43 in a unit other than, (1) a leasehold interest, including renewal options,
44 of less than 20 years, or (2) as security for an obligation.

45 "Quorum" means the number of persons required to be present at
46 a meeting of an association or an executing board pursuant to section

1 57 of P.L. , c. (C.) (pending before the Legislature as this bill).

2 "Real estate" means any leasehold or other estate or interest in,
3 over or under land, including structures, fixtures and other
4 improvements and interests that by custom, usage or law pass with a
5 conveyance of land, though not described in the contract of sale or
6 instrument of conveyance. The term includes parcels with or without
7 upper or lower boundaries and spaces that may be filled with air or
8 water.

9 "Residential purposes" means use for dwelling or recreational
10 purposes, or both.

11 "Rules" means the rules for the regulation or management of a
12 common interest community as adopted by an association.

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

21 "Special declarant rights" means rights reserved for the benefit of
22 a declarant to:

23 (1) complete improvements indicated on plats and plans filed with
24 the declaration pursuant to section 32 of P.L. , c. (C.)
25 (pending before the Legislature as this bill) or, in a cooperative, to
26 complete improvements described in the public offering statement
27 pursuant to the requirements of "The Planned Real Estate
28 Development Full Disclosure Act," P.L.1977 c. 419 (C.45:22A-21 et
29 seq.);

30 (2) exercise any development right pursuant to section 33 of
31 P.L. , c. (C.) (pending before the Legislature as this bill);

32 (3) maintain sales offices, management offices, signs advertising the
33 common interest community, and models pursuant to section 39 of
34 P.L. , c. (C.) (pending before the Legislature as this bill);

35 (4) use easements through the common elements for the purpose of
36 making improvements within the common interest community or
37 within real estate which may be added to the common interest
38 community pursuant to section 40 of P.L. , c. (C.) (pending
39 before the Legislature as this bill);

40 (5) make the common interest community subject to a master
41 association as defined in section 44 of P.L. , c. (C.) (pending
42 before the Legislature as this bill);

43 (6) merge or consolidate a common interest community with
44 another common interest community of the same form of ownership
45 as defined in section 45 of P.L. , c. (C.) (pending before the
46 Legislature as this bill); or

1 (7) appoint or remove any officer of the association or any master
2 association or any executive board member during any period of
3 declarant control pursuant to subsection d. of section 51 of P.L. , c.
4 (C.) (pending before the Legislature as this bill).

5 "Surplus" means the excess of all common receipts over all common
6 expenses.

7 "Time share" includes both "fee simple" and "right to use" time
8 share interests and means:

9 (1) an "interval estate" meaning a combination of an estate for years
10 in a unit, during the term of which title rotates among the time share
11 owners, coupled with a vested undivided fee simple interest in the
12 remainder in the unit as established by the declaration creating the
13 interval estate; or

14 (2) a "time span estate" meaning a combination of an undivided
15 interest in a present estate in fee simple in a unit established by the
16 declaration creating the time span estate, coupled with the exclusive
17 right to possession and occupancy of the unit during a regularly
18 recurring period.

19 "Unit" means a physical portion of the common interest community
20 designated for separate ownership or occupancy, the boundaries of
21 which are described pursuant to paragraph (4) of subsection a. of
22 section 28 of P.L. , c. (C.) (pending before the Legislature as
23 this bill).

24 "Unit owner" means a declarant or other person who owns a unit,
25 or a lessee of a unit in a leasehold common interest community whose
26 lease expires simultaneously with any lease the expiration or
27 termination of which will remove the unit from the common interest
28 community, but does not include a person having an interest in a unit
29 solely as security for an obligation. In a condominium or planned
30 community, the declarant is, as of the date of the recording of the
31 declaration, the owner of any unit created by the declaration. In a
32 cooperative, the declarant is treated as the owner of any unit to which
33 allocated interests have been allocated pursuant to section 30 of
34 P.L. , c. (C.) (pending before the Legislature as this bill) until
35 that unit has been conveyed to another person.

36
37 4. (New section) The provisions of P.L. , c. (C.)
38 (pending before the Legislature as this bill), except as expressly
39 provided therein, may not be varied by agreement, and rights conferred
40 by it may not be waived. A declarant may not act under a power of
41 attorney, or use any other device, to evade the limitations or
42 prohibitions of P.L. , c. (C.) (pending before the
43 Legislature as this bill) or the declaration. Provisions of any power of
44 attorney or other device intended to evade the limitations or
45 prohibitions of P.L. , c. (C.) (pending before the
46 Legislature as this bill) or the declaration shall be void as against

1 public policy.

2

3 5. (New section) a. In a cooperative, a unit owner's interest in a
4 unit and its allocated interests shall be deemed to be personal property.
5 The documents creating the ownership rights of a cooperative unit
6 owner and the bylaws of the cooperative shall be construed as
7 integrated documents incapable of being separated or distinguished
8 from each other. The transfer of any interest in a cooperative shall be
9 by means of a document recorded in the county in which the
10 cooperative is located. The transfer document shall contain the
11 following information:

12 (1) name of the cooperative;

13 (2) unit designation;

14 (3) reference to the last prior transfer of the unit, if previously
15 transferred;

16 (4) full name and address of the transferor and transferee of the
17 unit;

18 (5) executed and acknowledged consent of the cooperative
19 executive board authorizing and approving the transfer or assignment;

20 (6) number of shares transferred;

21 (7) statement of the full consideration paid for the cooperative unit
22 which includes the purchase price paid plus the amount derived from
23 application of the percent of ownership held in conjunction with the
24 unit to the unpaid balance of the fee or leasehold mortgage
25 encumbering the entire structure as of the date of the transfer or
26 assignment; and

27 (8) all other matters, consistent with P.L. , c. (C.) (pending
28 before the Legislature as this bill), which the parties may deem
29 appropriate.

30 Nothing in this section shall be construed to affect the treatment of
31 cooperative interests pursuant to the "2004 Homestead Property Tax
32 Rebate Act," sections 1 through 10 of P.L.1990, c.61 (C.54:4-8.57
33 through 54:4-8.66), sections 3, 14 through 16, 18, and 19 of
34 P.L.1999, c.63 (C.54:4-8.58a and C.54:4-8.66a through C.54:4-8.66e)
35 and the imposition of realty transfer fees as permitted by law.

36 b. In a condominium or planned community:

37 (1) If there is any unit owner other than a declarant, each unit that
38 has been created, together with its interest in the common elements,
39 constitutes for all purposes a separate parcel of real estate. A unit
40 shall be deemed created once it has been subjected to the declaration
41 for the common interest community by the recordation of either the
42 declaration or an amendment to the declaration.

43 (2) If there is any unit owner other than a declarant, each unit shall
44 be separately taxed and assessed, and no separate tax or assessment
45 may be rendered against any common elements for which a declarant
46 has reserved no development rights.

1 c. Any portion of the common elements for which the declarant has
2 reserved any development right shall be separately taxed and assessed
3 against the declarant, and the declarant alone shall be liable for
4 payment of those taxes.

5 d. If there is no unit owner other than a declarant, the real estate
6 comprising the common interest community may be taxed and assessed
7 in any manner provided by law.

8

9 6. (New section) a. No local housing code, maintenance code or
10 other local ordinance or regulation, whether adopted prior to or after
11 the date of P.L. , c. (C.) (pending before the Legislature as this
12 bill), shall impose any requirement upon any structure in a common
13 interest community which would not be imposed upon a physically
14 identical development under a different form of ownership.

15 b. The condominium or cooperative form of ownership shall not be
16 prohibited through any zoning or land use law, or shall any such law
17 impose a requirement upon a condominium or cooperative which
18 would not be imposed upon a physically identical development under
19 a different form of ownership.

20 c. Except as provided in subsections a. and b. of this section, the
21 provisions of P.L. , c. (C.) (pending before the Legislature as
22 this bill) shall not invalidate or modify any provision of any ordinance,
23 rule or regulation governing the use of real estate in this State.

24

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

38 b. Except as provided in subsection a. of this section, if part of a
39 unit is acquired by eminent domain, the award shall compensate the
40 unit owner for the reduction in value of the unit and its interest in the
41 common elements, whether or not any common elements are acquired.
42 Upon acquisition, unless the decree otherwise provides,

43 (1) that unit's allocated interests shall be reduced in proportion to
44 the reduction in the size of the unit, or on any other basis specified in
45 the declaration, and

46 (2) the portion of the allocated interests divested from the partially

1 acquired unit shall be reallocated to that unit and to the remaining
2 units in proportion to their interests before the taking, with the
3 partially-acquired unit participating in the reallocation on the basis of
4 its reduced allocated interests.

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

12 d. The executive board of the association, on behalf of the
13 association and all affected unit owners, shall have the power to amend
14 the declaration to reallocate interests in accordance with this section.
15 The executive board shall reallocate the interests by amending the
16 declaration and recording the amendment together with the court
17 decree in every county in which any portion of the common interest
18 community is located.

19

20 8. (New section) Unless displaced by particular provisions of
21 P.L. , c. (C.) (pending before the Legislature as this bill), the
22 principles of law and equity, including the law of corporations and
23 unincorporated associations, the law of real property, and the law
24 relative to capacity to contract, principal and agent, eminent domain,
25 estoppel, fraud, misrepresentation, duress, coercion, mistake,
26 receivership, substantial performance, or other validating or
27 invalidating causes shall supplement the provisions of P.L. , c.
28 (C.) (pending before the Legislature as this bill).

29

30 9. (New section) P.L. , c. (C.) (pending before the
31 Legislature as this bill) is a general act intended as a unified coverage
32 of its subject matter and so no part of it shall be construed to be
33 impliedly repealed by subsequent legislation if that construction can be
34 reasonably avoided.

35

36 10. (New section) P.L. , c. (C.) (pending before the
37 Legislature as this bill) shall be applied and construed to effectuate its
38 general purpose to make uniform the law with respect to the subject
39 of P.L. , c. (C.) (pending before the Legislature as this bill).

40

41 11. (New section) a. If any provision of P.L. , c. (C.) (pending
42 before the Legislature as this bill) or the application thereof to any
43 person or circumstances is held invalid, the invalidity shall not affect
44 other provisions or applications of P.L. , c. (C.) (pending
45 before the Legislature as this bill) which can be given effect without
46 the invalid provisions or applications, and to this end the provisions of

1 P.L. , c. (C.) (pending before the Legislature as this bill) are
2 severable.

3 b. In interpreting the terms of P.L. , c. (C.) (pending
4 before the Legislature as this bill) it is intended that, (1) any action,
5 power or right of an association, executive board, declarant, or unit
6 owner which is not expressly prohibited by P.L. , c. (C.)
7 (pending before the Legislature as this bill) or other law, and (2) any
8 provision of a declaration which is not in conflict with P.L. , c.
9 (C.) (pending before the Legislature as this bill) or other law, shall
10 be authorized under P.L. , c. (C.) (pending before the
11 Legislature as this bill).

12

13 12. (New section) a. A court, upon finding as a matter of law
14 that a contract or contract clause relative to real estate owned or to be
15 owned under a form of common interest ownership was
16 unconscionable at the time the contract was made, may either refuse
17 to enforce the contract, enforce the remainder of the contract without
18 the unconscionable clause, or limit the application of any
19 unconscionable clause in order to avoid an unconscionable result.

20 Whenever it is claimed, or appears to the court, that a contract or
21 any contract clause is or may be unconscionable, the parties, in order
22 to aid the court in making the determination, shall be afforded a
23 reasonable opportunity to present evidence as to:

24 (1) the commercial setting of the negotiations;

25 (2) whether a party has knowingly taken advantage of the inability
26 of another party reasonably to protect his interests by reason of
27 physical or mental infirmity, illiteracy, inability to understand the
28 language of the agreement, or similar factors; and

29 (3) the effect and purpose of the contract or clause.

30 b. There shall be a rebuttable presumption of unconscionability
31 with respect to leases involving a common interest community,
32 including, but not limited to, leases concerning the use by unit owners
33 of parking, recreational or other common facilities or areas. The
34 presumption may be rebutted by a lessor through the presentation of
35 evidence demonstrating the existence of facts and circumstances
36 sufficient to justify and validate a lease which would otherwise appear
37 to be unconscionable under the provisions of this section. A
38 rebuttable presumption of unconscionability shall arise if one or more
39 of the following elements exist, but the failure of a lease to contain any
40 of the following elements shall neither preclude a determination of its
41 unconscionability nor raise a presumption of its conscionability:

42 (1) None of the persons executing the lease were, at the time of the
43 lease execution, elected by unit owners other than the declarant;

44 (2) The lease requires either the association or the unit owners to
45 pay real estate taxes on the real estate described in the lease;

46 (3) The lease requires either the association or the unit owners to

1 insure buildings or other facilities on the real estate described in the
2 lease against fire or any other hazard;

3 (4) The lease requires either the association or the unit owners to
4 perform some or all maintenance obligations pertaining to the real
5 estate or facilities located upon the real estate described in the lease;

6 (5) The lease requires either the association or the unit owners to
7 pay rents to the lessor for a period of 10 years or more;

8 (6) The lease provides that failure of the lessee to make payments
9 of rents due under the lease either creates, establishes or permits
10 establishment of a lien upon individual units to secure claims for rent;

11 (7) The lease requires an annual rental which exceeds 20 percent of
12 the appraised value of the leased real estate as improved; provided,
13 that for purposes of this paragraph, "annual rental" means the amount
14 due during the first 12 months of the lease from all units regardless of
15 whether the units were in fact occupied or sold during that period, and
16 "appraised value" means the appraised value placed upon the leased
17 real estate the first tax year after the sale of a unit in the common
18 interest community;

19 (8) The lease provides for a periodic rental increase based upon
20 reference to a price index;

21 (9) The lease, declaration or other common interest community
22 document requires that every transferee of a unit must assume the
23 obligations under the lease.

24 c. When any parking, recreational or other common facility or area
25 has been leased for the use of the unit owners for 20 years or more,
26 the association or the unit owners shall have the option of renewing
27 the lease for the parking, recreational or other common facility or area
28 or of buying that facility or area and real estate at a conscionable price.

29 d. No contract for the sale of a unit executed on or after the
30 effective date of P.L. , c. (C.) (pending before the Legislature
31 as this bill), or any declaration or association bylaws adopted on or
32 after that effective date, shall contain a clause or provision affording
33 the declarant or the association the right of first refusal to buy a unit
34 upon resale, gift or devise by a unit owner. No declaration or
35 association bylaw, whenever adopted, shall be amended on or after the
36 effective date of P.L. , c. (C.) (pending before the Legislature
37 as this bill) to include any such clause or provision affording the right
38 of first refusal. This section shall not apply to the State of New Jersey
39 or any political subdivision of this State, or to any department,
40 division, office, agency, or bureau thereof, or any authority or
41 instrumentality created thereby, when a right of first refusal is required
42 by State or federal law.

43

44 13. (New section) Every contract or duty governed by P.L. , c.
45 (C.) (pending before the Legislature as this bill) shall impose an
46 obligation of good faith in its performance or enforcement.

1 14. (New section) a. The remedies provided by P.L. , c. (C.)
2 (pending before the Legislature as this bill) shall be liberally
3 administered to the end that the aggrieved party is put in as good a
4 position as if the other party had fully performed. Consequential,
5 special or punitive damages, however, shall not be awarded except as
6 specifically provided in P.L. , c. (C.) (pending before the
7 Legislature as this bill) or by other rule of law.

8 b. Any right or obligation declared by P.L. , c. (C.) (pending
9 before the Legislature as this bill) shall be enforceable by judicial
10 proceeding.

11

12 15. (New section) a. As used in this section:

13 "Index" means the changes in the Consumer Price Index compiled
14 by the Bureau of Labor Statistics, United States Department of Labor
15 for the following series: Urban Wage Earners and Clerical Workers
16 (CPI-W); U.S. City Average, All Items and 1982-84 = 100.

17 "Reference base index" means the average index level of the
18 36-month period encompassing 1982,1983 and 1984.

19 b. From time to time, the dollar amounts specified in section 18 of
20 P.L. , c. (C.) (pending before the Legislature as this bill),
21 section 50 of P.L. , c. (C.) (pending before the Legislature as
22 this bill), subsection a. of section 64 of P.L. , c. (C.) (pending
23 before the Legislature as this bill) , subsections a. and f. of section 66
24 of P.L. , c. (C.) (pending before the Legislature as this bill) ,
25 and subsections c. and d. of section 86 of P.L. , c. (C.)
26 (pending before the Legislature as this bill), shall be adjusted, as
27 provided in subsections c. and d. of this section.

28 c. The dollar amount specified in section 18 of P.L. , c.
29 (C.) (pending before the Legislature as this bill) and any amount
30 stated in the declaration pursuant to that section, and the dollar
31 amounts specified in subsection c. of section 66 of P.L. , c.
32 (C.) (pending before the Legislature as this bill) shall be adjusted
33 on July 1 of each year if the percentage of change, calculated to the
34 nearest whole percentage point, between the index at the end of the
35 preceding year and the reference base index is 10 percent or more;
36 however,

37 (1) that portion of the percentage change in the index in excess of
38 a multiple of 10 percent shall be disregarded and the dollar amount
39 shall be adjusted only in multiples of 10 percent of the dollar amount
40 in effect on the date of enactment;

41 (2) the dollar amount shall not be adjusted if the amount required
42 by this section is that currently in effect pursuant to P.L. , c.
43 (C.) (pending before the Legislature as this bill) as a result of
44 earlier application of this section; and

45 (3) in no event shall the dollar amount be adjusted below the
46 amount in effect on the date of enactment.

1 d. If the index is revised after January, 1988, the percentage of
2 adjustment pursuant to this section shall be calculated on the basis of
3 the revised index. If a revision of the index changes the reference base
4 index, a revised reference base index shall be determined by
5 multiplying the reference base index then applicable by the rebasing
6 factor furnished by the Bureau of Labor Statistics. If the index is
7 superseded, the index referred to in this section shall be the one
8 represented by the Bureau of Labor Statistics as reflecting most
9 accurately the changes in the purchasing power of the dollar for
10 consumers.

11

12 16. (New section) a. The provisions of P.L. , c. (C.)
13 (pending before the Legislature as this bill) shall apply to all common
14 interest communities created within this State after the effective date
15 of P.L. , c. (C.) (pending before the Legislature as this bill).

16 b. Except as provided in sections 18, 19, and 20 of P.L. , c.
17 (C.) (pending before the Legislature as this bill), the provisions of
18 P.L. , c. (C.) (pending before the Legislature as this bill) shall
19 apply to all common interest communities created within this State
20 prior to the effective date of P.L. , c. (C.) (pending before the
21 Legislature as this bill). The applicability of P.L. , c. (C.)
22 (pending before the Legislature as this bill) to common interest
23 communities in existence prior to the effective date of P.L. , c.
24 (C.) (pending before the Legislature as this bill) shall not affect the
25 priority of any lien recorded prior to the effective date of P.L. , c.
26 (C.) (pending before the Legislature as this bill) or impair the
27 obligations under any contract made prior to the effective date of
28 P.L. , c. (C.) (pending before the Legislature as this bill).
29 Any action relating to a common interest community that occurred
30 prior to the effective date of P.L. , c. (C.) (pending before the
31 Legislature as this bill) shall be governed by the law in effect at the
32 time of the action. Notwithstanding any provision of P.L. , c.
33 (C.) (pending before the Legislature as this bill) superseding or
34 repealing any other law, the rights of unit owners and all other affected
35 parties existing under any prior law are preserved, and shall be
36 enforceable under P.L. , c. (C.) (pending before the Legislature
37 as this bill) unless expressly superseded by P.L. , c. (C.)
38 (pending before the Legislature as this bill).

39 c. Pursuant to section 102 of P.L. , c. (C.) (pending before
40 the Legislature as this bill), any master declaration filed under "The
41 Cooperative Recording Act of New Jersey," P.L.1987, c.381
42 (C.46:8D-1 et seq.) will be deemed a declaration under P.L. , c.
43 (C.) (pending before the Legislature as this bill) and will be subject
44 to the terms of section 19 of P.L. , c. (C.) (pending before the
45 Legislature as this bill). All cooperatives created after the effective
46 date of P.L. , c. (C.) (pending before the Legislature as this

1 bill) shall be created in accordance with section 24 of P.L. , c.
2 (C.) (pending before the Legislature as this bill).

3
4 17. (New section) Except as provided in section 20 of P.L. , c.
5 (C.) (pending before the Legislature as this bill), all cooperatives
6 shall be subject to the provisions of P.L. , c. (C.) (pending before
7 the Legislature as this bill).

8
9 18. (New section) a. If a planned community:

10 (1) contains fewer than 10 units; or

11 (2) provides, in its declaration, that the annual average common
12 expense liability of all units restricted to residential purposes, exclusive
13 of optional user fees and any insurance premiums paid by the
14 association, may not exceed \$300, as adjusted pursuant to section 15
15 of P.L. , c. (C.) (pending before the Legislature as this bill), the
16 planned community shall be subject only to sections 5, 6, 7, 24 and 65
17 of P.L. , c. (C.) (pending before the Legislature as this bill),
18 unless the declaration provides that the community shall be subject to
19 P.L. , c. (c.) (pending before the Legislature as this bill) in its
20 entirety.

21 b. The exemption provided in paragraph (2) of subsection a. of this
22 section shall apply only if:

23 (1) The declarant has a reasonable basis for concluding that the
24 maximum stated assessment will be sufficient to pay the expenses of
25 the planned community;

26 (2) The declaration provides that the assessment may not be
27 increased during the period of declarant control without the consent
28 of all unit owners;

29 (3) The declarant provides to the New Jersey Department of
30 Community Affairs an itemized budget setting forth the dollar amount
31 allocable to each category of expense; and

32 (4) The planned community is otherwise qualified to receive an
33 exemption pursuant to section 5 of "The Planned Real Estate
34 Development Full Disclosure Act," P.L. 1977, c.419(C.45:22A-25).

35
36 19. (New section) All preexisting common interest communities
37 shall be controlled by all of the provisions of P.L. , c. (C.)
38 (pending before the Legislature as this bill); however, such
39 associations shall be permitted to maintain existing provisions of a
40 declaration, bylaws or plats or plans of those common interest
41 communities to the extent those provisions are not in conflict with the
42 provisions of P.L. , c. (C.) (pending before the Legislature as this
43 bill). For example, a common interest community that has consistently
44 maintained in its master deed or declaration and bylaws a definition of
45 common elements which differs from the definition provided in P.L. ,
46 c. (C.) (pending before the Legislature as this bill) shall be

1 permitted to maintain such a definition provided that other provisions
2 of P.L. , c. (C.) (pending before the Legislature as this bill) are
3 not violated by maintaining that definition.

4 A common interest community may apply to the commissioner for
5 an exemption from the provisions of P.L. , c. (C.) (pending
6 before the Legislature as this bill). The commissioner may grant the
7 exemption if it appears:

8 a. governing documents, deeds and other information indicate that
9 the property does not qualify as a common interest community as
10 defined pursuant to P.L. , c. (C.) (pending before the Legislature
11 as this bill); or

12 b. the limited nature of the common or shared elements of the
13 community are such that inclusion of the community under all of the
14 provisions of P.L. , c. (C.) (pending before the Legislature as this
15 bill) is not warranted. Notwithstanding an exemption granted by the
16 commissioner under this subsection, an association shall remain
17 responsible for the maintenance of any common or shared elements,
18 and the powers and responsibilities granted pursuant to sections 48
19 through 72 of P.L. , c. (C.) (pending before the Legislature as this
20 bill) shall apply to such an association.

21
22 20. (New section) If a cooperative or planned community created
23 within this State before the effective date of P.L. , c. (C.) (pending
24 before the Legislature as this bill) contains fewer than 10 units and is
25 not subject to any development rights, it shall be subject only to
26 sections 5, 6 and 7 of P.L. , c. (C.) (pending before the
27 Legislature as this bill), unless the declaration is amended to provide
28 that the small pre-existing cooperative or planned community shall be
29 subject to all sections of P.L. , c. (C.) (pending before the
30 Legislature as this bill).

31
32 21. (New section) a. Notwithstanding any law or regulation to
33 the contrary, the declaration, bylaws or plats and plans of any common
34 interest community created before the effective date of P.L. , c.
35 (C.) (pending before the Legislature as this bill) may be amended to
36 conform to it. Pursuant to section 50 of P.L. , c. (C.) (pending
37 before the Legislature as this bill), an executive board may vote to
38 amend any of the above documents without obtaining unit owner
39 approval.

40 b. Except as provided in subsection a. of section 21 of P.L. , c.
41 (C.) (pending before the Legislature as this bill), an amendment
42 to the declaration, bylaws or plats and plans authorized by this section
43 must be adopted in conformity with any procedures and requirements
44 for amending the instruments specified in those instruments or, if there
45 are none, in conformity with section 41 of P.L. , c. (C.)
46 (pending before the Legislature as this bill). If an amendment grants to

1 any person any rights, powers or privileges under P.L. , c. (C.)
2 (pending before the Legislature as this bill), all correlative obligations,
3 liabilities and restrictions imposed by P.L. , c. (C.) (pending before
4 the Legislature as this bill) shall also apply to that person.

5
6 22. (New section) a. As used in this section, "nonresidential
7 common interest community" means a common interest community in
8 which all units are restricted exclusively to nonresidential purposes.

9 b. A nonresidential common interest community shall not be
10 subject to the provisions of P.L. , c. (C.) (pending before the
11 Legislature as this bill) unless the declaration otherwise provides.

12 c. The declaration of a nonresidential common interest community
13 may provide that P.L. , c. (C.) (pending before the Legislature as
14 this bill) in its entirety applies to the community or that only sections
15 5, 6 and 7 of P.L. , c. (C.) (pending before the Legislature as
16 this bill) apply.

17 d. If a nonresidential common interest community has opted to be
18 subject to P.L. , c. (C.) (pending before the Legislature as this
19 bill) in its entirety, then the declaration may also require, subject to
20 section 12 of P.L. , c. (C.) (pending before the Legislature as
21 this bill) that:

22 (1) Notwithstanding the provisions of section 52 of P.L. , c.
23 (C.) (pending before the Legislature as this bill), any management
24 contract, employment contract, lease of recreational or parking areas
25 or facilities, and any other contract or lease between an association
26 and a declarant or an affiliate of a declarant, shall continue in force
27 after the declarant turns over control of the association; and

28 (2) Notwithstanding the provisions of section 4 of P.L. , c.
29 (C.) (pending before the Legislature as this bill), purchasers of
30 units may be required to execute proxies, powers of attorney, or
31 similar devices in favor of the declarant regarding particular matters
32 enumerated in those instruments.

33 e. A common interest community that contains units restricted
34 exclusively to nonresidential purposes and other units which may be
35 used for residential purposes shall not be subject to the provisions of
36 P.L. , c. (C.) (pending before the Legislature as this bill) unless the
37 units that may be used for residential purposes would comprise a
38 common interest community in the absence of the nonresidential units,
39 or the declaration provides that P.L. , c. (C.) (pending before the
40 Legislature as this bill) applies as provided in subsections c. or d. of
41 this section.

42
43 23. (New section) The provisions of P.L. , c. (C.) (pending
44 before the Legislature as this bill) shall not apply to common interest
45 communities which are governed by the "Real Estate Sales Full
46 Disclosure Act," P.L.1989, c.239 (C.45:15-16.27 et seq.).

ARTICLE 2

CREATION, ALTERATION AND TERMINATION OF
COMMON INTEREST COMMUNITIES

24. (New section) A common interest community may be created pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration shall be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the declaration.

25. (New section) Except as provided by the declaration:

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

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

c. Subject to subsection b., all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit shall be a part of the unit.

d. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors, windows, skylights, or other fixtures designed to serve a single unit, but located outside the unit's boundaries, shall be limited common elements allocated exclusively to that unit.

26. (New section) a. All provisions of the declaration and bylaws shall be severable.

b. The Rule Against Perpetuities shall not apply. Any provision of a declaration or of bylaws, rules, or regulations adopted pursuant to paragraph (2) of subsection a. of section 49 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not be subject to or held to be in violation of any principle of law against perpetuities or restraints on alienation.

1 c. In the event of a conflict between the provisions of the
2 declaration and the bylaws, the declaration shall prevail except to the
3 extent the declaration is inconsistent with P.L. , c. (C.)(pending
4 before the Legislature as this bill).

5 d. Title to a unit and common elements shall not be rendered
6 unmarketable or otherwise affected by reason of failure of the
7 declaration to comply with P.L. , c. (C.) (pending before the
8 Legislature as this bill).

9
10 27. (New section) A description of a unit which sets forth the
11 name of the common interest community, the recording data for the
12 declaration, the county and municipality in which the common interest
13 community is located, and the identifying number of the unit, shall be
14 a legally sufficient description of that unit and all rights, obligations,
15 and interests appurtenant to that unit which were created by the
16 declaration or bylaws.

17
18 28. (New section) a. The declaration shall contain:

19 (1) The names of the common interest community and the
20 association and a statement that the common interest community is
21 either a condominium, cooperative, or planned community;

22 (2) The name of every county in which any part of the common
23 interest community is situated;

24 (3) A legally sufficient description of the real estate included in the
25 common interest community;

26 (4) In a condominium or planned community, a description of the
27 boundaries of each unit created by the declaration, including the unit's
28 identifying number, its size or number of rooms, and its location within
29 a building if it is within a building containing more than one unit;

30 (5) A description of any limited common elements, other than those
31 specified in subsections b. and d. of section 25 of P.L. , c. (C.)
32 (pending before the Legislature as this bill), together with a statement
33 that they may be so allocated;

34 (6) A description of any real estate, except real estate subject to
35 development rights, that may be allocated subsequently as limited
36 common elements, other than limited common elements specified in
37 subsections b. and d. of section 25 of P.L. , c. (C.) (pending
38 before the Legislature as this bill), together with a statement that they
39 may be so allocated;

40 (7) A description of any development rights and other special
41 declarant rights reserved by the declarant, together with a legally
42 sufficient description of the real estate to which each of those rights
43 applies, and a time limit within which each of those rights must be
44 exercised;

45 (8) If any development right may be exercised with respect to
46 different parcels of real estate at different times, a statement to that

1 effect together with (a) either a statement fixing the boundaries of
2 those portions and regulating the order in which those portions may be
3 subjected to the exercise of each development right or a statement that
4 no assurances are made in those regards, and (b) a statement as to
5 whether, if any development right is exercised in any portion of the
6 real estate subject to that development right, that development right
7 must be exercised in all or in any other portion of the remainder of that
8 real estate;

9 (9) Any other conditions or limitations under which the rights
10 described in paragraph (8) may be exercised or will lapse;

11 (10) An allocation to each unit of the allocated interests in the
12 manner described in section 30 of P.L. , c. (C.) (pending before
13 the Legislature as this bill) ;

14 (11) Any restrictions (a) on alienation of the units, including any
15 restrictions on leasing which exceed the restrictions on leasing units
16 that executive boards may impose pursuant to subsection d. of section
17 49 of P.L. , c. (C.) (pending before the Legislature as this bill),
18 and (b) on the amount for which a unit may be sold or on the amount
19 that may be received by a unit owner on sale, condemnation, or
20 casualty loss to the unit or to the common interest community, or on
21 termination of the common interest community;

22 (12) The recording data for recorded easements and licenses
23 appurtenant to or included in the common interest community or to
24 which any portion of the common interest community is or may
25 become subject by virtue of a reservation in the declaration; and

26 (13) All matters required by sections 29 through 32 of P.L. , c.
27 (C.) (pending before the Legislature as this bill), section 40 of
28 P.L. , c. (C.) (pending before the Legislature as this bill), and
29 subsection d. of section 51 of P.L. , c. (C.) (pending before the
30 Legislature as this bill).

31 b. The declaration may contain any other matters the declarant
32 considers appropriate, including any restrictions on the uses of a unit
33 or the number or other qualifications of persons who may occupy
34 units.

35

36 29. (New section) a. Any lease the expiration or termination of
37 which may terminate the common interest community or reduce its
38 size shall be recorded. Every lessor of such leases in a condominium
39 or planned community shall sign the declaration. The declaration shall
40 state:

41 (1) The recording data for the lease;

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

43 (3) A legally sufficient description of the real estate subject to the
44 lease;

45 (4) Any right of the unit owners to redeem the reversion and the
46 manner whereby those rights may be exercised, or a statement that

1 they do not have those rights;

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

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

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

16 c. Acquisition of the leasehold interest of any unit owner by the
17 owner of the reversion or remainder shall not merge the leasehold and
18 fee simple interests unless the leasehold interests of all unit owners
19 subject to that reversion or remainder are acquired.

20 d. If the expiration or termination of a lease decreases the number
21 of units in a common interest community, the allocated interests shall
22 be reallocated in accordance with subsection a. of section 7 of P.L. ,
23 c. (C.) (pending before the Legislature as this bill) as if those
24 units had been taken by eminent domain. Reallocations shall be
25 confirmed by an amendment to the declaration which shall be
26 prepared, executed and recorded by the association.

27
28 30. (New section) a. The declaration shall allocate to each unit:

29 (1) In a condominium, a fraction or percentage of undivided
30 interests in the common elements and in the common expenses of the
31 association as enumerated in subsection c. of section 63 of P.L. , c.

32 (C.) (pending before the Legislature as this bill), and a portion of
33 the votes in the association;

34 (2) In a cooperative, an ownership interest in the association, a
35 fraction or percentage of the common expenses of the association as
36 enumerated subsection c. of section 63 of P.L. , c. (C.) (pending
37 before the Legislature as this bill), and a portion of the votes in the
38 association; and

39 (3) In a planned community, a fraction or percentage of the
40 common expenses of the association as enumerated in subsection c. of
41 section 63 of P.L. , c. (C.) (pending before the Legislature as
42 this bill), and a portion of the votes in the association.

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

46 c. If units may be added to or withdrawn from the common interest

1 community, the declaration shall state the formulas to be used to
2 reallocate the allocated interests among all units included in the
3 common interest community after the addition or withdrawal.

4 d. The declaration may provide: (1) that different allocations of
5 votes shall be made to the units on particular matters specified in the
6 declaration; (2) for cumulative voting only for the purpose of electing
7 members of the executive board; and (3) for class voting on specified
8 issues affecting the class if necessary to protect valid interests of the
9 class. A declarant shall not utilize cumulative or class voting for the
10 purpose of evading any limitation imposed on declarants by P.L. , c.
11 (C.) (pending before the Legislature as this bill) and units shall not
12 constitute a class because they are owned by a declarant.

13 e. Except for minor variations due to rounding, the sum of the
14 common expense liabilities and, in a condominium, the sum of the
15 undivided interests in the common elements allocated at any time to all
16 the units shall each equal one, if stated as a fraction, or 100 percent,
17 if stated as a percentage. In the event of a discrepancy between an
18 allocated interest and the result derived from application of the
19 pertinent formula, the allocated interest shall prevail.

20 f. In a condominium, the common elements shall not be subject to
21 partition, and any purported conveyance, encumbrance, judicial sale,
22 or other voluntary or involuntary transfer of an undivided interest in
23 the common elements made without the unit to which that interest is
24 allocated shall be void.

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

29 h. Except to the extent that the declaration provides for limited
30 common elements, it shall provide that the right of a unit owner to the
31 use of the common elements is a right in common with all other unit
32 owners.

33

34 31. (New section) a. Except for the limited common elements
35 described in subsections b. and d. of section 25 of P.L. , c. (C.)
36 (pending before the Legislature as this bill), the declaration shall
37 specify to which unit or units each limited common element is
38 allocated. An allocation shall not be altered without the consent of the
39 unit owners whose units are affected.

40 b. Except as the declaration otherwise provides, a limited common
41 element shall be reallocated by an amendment to the declaration
42 executed by the unit owners between or among whose units the
43 reallocation is made. The persons executing the amendment shall
44 provide a copy thereof to the association, which shall record it. The
45 amendment shall be recorded in the names of the parties and the
46 common interest community.

1 c. A common element not previously allocated as a limited
2 common element shall be so allocated only pursuant to provisions in
3 the declaration made in accordance with paragraph (7) of subsection
4 a. of section 28 of P.L. , c. (C.) (pending before the Legislature
5 as this bill). The allocations shall be made by amendments to the
6 declaration.

7
8 32. (New section) a. Plats and plans shall be a part of the
9 declaration and shall be required for all common interest communities
10 except cooperatives. Separate plats and plans shall not be required if
11 all of the information required by this section is contained in either a
12 plat or plan. Each plat and plan shall be clear and legible and contain
13 a certification that the plat or plan contains all of the information
14 required by this section.

15 b. Each plat shall show or project:

16 (1) The name and a survey or general schematic map of the entire
17 common interest community;

18 (2) The location and dimensions of all real estate not subject to
19 development rights, or subject only to the development right to
20 withdraw, and the location and dimensions of all existing
21 improvements within that real estate;

22 (3) A legally sufficient description of any real estate subject to
23 development rights, labeled to identify the rights applicable to each
24 parcel;

25 (4) The extent of any encroachments by or upon any portion of the
26 common interest community;

27 (5) To the extent feasible, a legally sufficient description of all
28 easements serving or burdening any portion of the common interest
29 community;

30 (6) Except as provided in subsection h. of this section, the
31 approximate location and dimensions of any vertical unit boundaries
32 not shown or projected on plans recorded pursuant to subsection d. of
33 this section and that unit's identifying number;

34 (7) The location with reference to an established datum of any
35 horizontal unit boundaries not shown or projected on plans recorded
36 pursuant to subsection d. of this section and that unit's identifying
37 number;

38 (8) A legally sufficient description of any real estate in which the
39 unit owners will own only an estate for years, labeled as "leasehold
40 real estate";

41 (9) The distance between non-contiguous parcels of real estate
42 comprising the common interest community;

43 (10) The approximate location and dimensions of any porches,
44 decks, balconies, garages, or patios allocated as limited common
45 elements, and also a narrative description of any other limited common
46 elements; and

1 (11) In the case of real estate not subject to development rights, all
2 other matters customarily shown on land surveys.

3 c. A plat also shall show the intended location and dimensions of
4 any contemplated improvement to be constructed anywhere within the
5 common interest community. Any contemplated improvement shown
6 shall be labeled either "MUST BE BUILT" or "NEED NOT BE
7 BUILT".

8 d. Except as provided in subsection h. of this section, to the extent
9 not shown or projected on the plats, plans of the units shall show or
10 project:

11 (1) The approximate location and dimensions of the vertical
12 boundaries of each unit, and that unit's identifying number;

13 (2) The approximate location of any horizontal unit boundaries,
14 with reference to an established datum, and that unit's identifying
15 number; and

16 (3) The approximate location of any units in which the declarant has
17 reserved the right to create additional units or common elements as
18 enumerated in subsection c. of section 33 of P.L. , c. , (C.)
19 (pending before the legislature as this bill), identified appropriately.

20 e. Unless the declaration provides otherwise, the horizontal
21 boundaries of part of a unit located outside a building shall have the
22 same elevation as the horizontal boundaries of the inside part, and
23 need not be depicted on the plats and plans.

24 f. Upon exercising any development right, the declarant shall
25 record either new plats and plans necessary to conform to the
26 requirements of subsections a., b., and d. of this section, or new
27 certifications of plats and plans previously recorded if those plats and
28 plans otherwise conform to the requirements of those subsections.

29 g. Any certification of a plat or plan required by this section shall
30 be made by a professional surveyor, architect or engineer who has
31 been licensed by this State.

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

34 (1) The plat shows the location and dimensions of all buildings
35 containing or comprising the units; and

36 (2) The declaration includes other information that shows or
37 contains a narrative description of the general layout of the units in
38 those buildings and the limited common elements allocated to those
39 units.

40

41 33. (New section) a. To exercise any development right reserved
42 under paragraph (7) of subsection a. of section 28 of P.L. , c.
43 (C.) (pending before the Legislature as this bill), the declarant shall
44 prepare, execute and record an amendment to the declaration pursuant
45 to section 40 of P.L. , c. (C.) (pending before the Legislature
46 as this bill) and, in a condominium or planned community, comply with

1 section 32 of P.L. , c. (C.) (pending before the Legislature as
2 this bill). The declarant shall be the unit owner of any units thereby
3 created. The amendment to the declaration shall assign an identifying
4 number to each new unit created, and, except in the case of
5 subdivision or conversion of units described in subsection b. of this
6 section, reallocate the allocated interests among all units. The
7 amendment shall describe any common elements and any limited
8 common elements thereby created and, in the case of limited common
9 elements, designate the unit to which each is allocated to the extent
10 required by section 31 of P.L. , c. (C.) (pending before the
11 Legislature as this bill).

12 b. Development rights may be reserved within any real estate added
13 to the common interest community if the amendment adding that real
14 estate includes all matters required by sections 28 or 29 of P.L. , c.
15 (C.) (pending before the Legislature as this bill), as the case may
16 be, and, in a condominium or planned community, the plats and plans
17 include all matters required by section 32 of P.L. , c. (C.)
18 (pending before the Legislature as this bill). This provision does not
19 extend the time limit on the exercise of development rights imposed by
20 the declaration pursuant to paragraph (8) of subsection a. of section
21 28 of P.L. , c. (C.) (pending before the Legislature as this bill).

22 c. Whenever a declarant exercises a development right to subdivide
23 or convert a unit previously created into additional units, common
24 elements, or both:

25 (1) If the declarant converts the unit entirely to common elements,
26 the amendment to the declaration shall reallocate all the allocated
27 interests of that unit among the other units as if that unit had been
28 taken by eminent domain pursuant to section 7 of P.L. , c.
29 (C.) (pending before the legislature as this bill); and

30 (2) If the declarant subdivides the unit into two or more units,
31 whether or not any part of the unit is converted into common
32 elements, the amendment to the declaration shall reallocate all the
33 allocated interests of the unit among the units created by the
34 subdivision in any reasonable manner prescribed by the declarant.

35 d. If the declaration provides, pursuant to paragraph (7) of
36 subsection a. of section 28 of P.L. , c. (C.) (pending
37 before the legislature as this bill), that all or a portion of the real estate
38 is subject to a right of withdrawal:

39 (1) If all the real estate is subject to withdrawal, and the declaration
40 does not describe separate portions of real estate subject to that right,
41 none of the real estate shall be withdrawn after a unit has been
42 conveyed to a purchaser; and

43 (2) If any portion is subject to withdrawal, it shall not be withdrawn
44 after a unit in that portion has been conveyed to a purchaser.

45

46 34. (New section) Subject to the provisions of the declaration and

1 other provisions of law, including, but not limited to the code adopted
2 pursuant to the "State Uniform Construction Code Act," P.L.1975,
3 c.217(C.52:27D-119 et seq.), an owner:

4 a. May make any improvements or alterations to his unit that do
5 not impair the structural integrity or mechanical systems or lessen the
6 support of any portion of the common interest community;

7 b. Shall not change the appearance of the common elements, or the
8 exterior appearance of a unit or any other portion of the common
9 interest community, without permission of the association; or

10 c. After acquiring an adjoining unit or an adjoining part of an
11 adjoining unit, may remove or alter any intervening partition or create
12 apertures therein, even if the partition in whole or in part is a common
13 element, if those acts do not impair the structural integrity or
14 mechanical systems or lessen the support of any portion of the
15 common interest community. Removal of partitions or creation of
16 apertures under this paragraph shall not be an alteration of boundaries.
17

18 35. (New section) a. Subject to the provisions of the declaration
19 and other provisions of law, the boundaries between adjoining units
20 may be relocated by an amendment to the declaration upon application
21 to the association by the owners of those units. If the owners of the
22 adjoining units have specified a reallocation between their units of
23 their allocated interests, the application shall state the proposed
24 reallocations. Unless the executive board determines, within 30 days,
25 that the reallocations are unreasonable, the association shall prepare
26 an amendment that identifies the units involved and states the
27 reallocations. The amendment shall be executed by those unit owners,
28 contain words of conveyance between them, and, on recordation, be
29 indexed in the name of the grantor and the grantee, and in the grantee's
30 index in the name of the association.

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

1 c. The association in a condominium or planned community shall
2 prepare and record plats or plans as necessary to show the altered
3 boundaries of affected units, and their dimensions and identifying
4 numbers. The association in a cooperative shall prepare and record
5 amendments to the declaration, including any plans, as necessary to
6 show or describe the altered boundaries of affected units, and their
7 dimensions and identifying numbers.

8
9 36. (New section) If a unit in a cooperative is sold, conveyed,
10 voluntarily or involuntarily encumbered, or otherwise transferred by
11 a unit owner, the interest in that unit which is sold, conveyed,
12 encumbered, or otherwise transferred shall be the right to possession
13 of that unit under a proprietary lease, coupled with the allocated
14 interests of that unit, and the association's interest in that unit shall not
15 be thereby affected.

16
17 37. (New section) a. If the declaration expressly so permits, a unit
18 may be subdivided into two or more units. Subject to the provisions
19 of the declaration and other relevant provisions of law, upon
20 application of a unit owner to subdivide a unit, the association shall
21 prepare, execute and record an amendment to the declaration,
22 including in a condominium or planned community the plats and plans,
23 subdividing that unit.

24 b. The amendment to the declaration shall be executed by the
25 owner of the unit to be subdivided and shall assign an identifying
26 number to each unit created and reallocate the allocated interests
27 formerly allocated to the subdivided unit to the new units in any
28 reasonable manner prescribed by the owner of the subdivided unit.

29
30 38. (New section) The existing physical boundaries of a unit or the
31 physical boundaries of a unit reconstructed in substantial accordance
32 with the description contained in the original declaration shall be its
33 legal boundaries, rather than the boundaries derived from the
34 description contained in the original declaration, regardless of vertical
35 or lateral movement of the building or minor variance between those
36 boundaries and the boundaries derived from the description contained
37 in the original declaration. This section shall not relieve a unit owner
38 of liability in case of his willful misconduct or relieve a declarant or
39 any other person of liability for failure to adhere to any plats or plans
40 or, in a cooperative, to any representation in the public offering
41 statement.

42
43 39. (New section) Unless the declaration provides otherwise, a
44 declarant may maintain sales offices, management offices, and models
45 in units or on common elements in the common interest community.
46 In a cooperative or condominium, any sales office, management office,

1 or model not designated as a unit by the declaration shall be a common
2 element. If a declarant ceases to be a unit owner, he shall cease to
3 have any rights with regard to such office or model unless it is
4 removed promptly from the common interest community in accordance
5 with a right to remove which has been reserved in the declaration.
6 Subject to any limitations in the declaration, a declarant may maintain
7 signs on the common elements advertising the common interest
8 community.

9
10 40. (New section) a. Subject to the provisions of the declaration,
11 a declarant shall possess an easement through the common elements
12 as may be reasonably necessary for the purpose of discharging the
13 declarant's obligations or exercising special declarant rights, whether
14 arising under P.L. , c. (C.) (pending before the Legislature as this
15 bill) or reserved in the declaration.

16 b. In a planned community, subject to the provisions of paragraph
17 (6) of subsection a. of section 49 of P.L. , c. (C.) (pending
18 before the Legislature as this bill), and section 60 of P.L. , c.
19 (C.) (pending before the Legislature as this bill), unit owners shall
20 have an easement,

21 (1) in the common elements for purposes of access to their units,
22 and

23 (2) to use the common elements and all real estate that must
24 become common elements pursuant to paragraph (6) of subsection a.
25 of section 28 of P.L. , c. (C.) (pending before the Legislature
26 as this bill); for all other purposes.

27
28 41. (New section) a. Except in cases of amendments that may be
29 executed by a declarant under subsection f. of section 32 of P.L. , c.
30 (C.) (pending before the Legislature as this bill) or section 33 of
31 P.L. , c. (C.) (pending before the Legislature as this bill); or by
32 the association under section 7 of P.L. , c. (C.) (pending before
33 the Legislature as this bill), subsection d. of section 29 of P.L. , c.
34 (C.) (pending before the Legislature as this bill), subsection c. of
35 section 31 of P.L. , c. (C.) (pending before the Legislature as
36 this bill), subsection a. of section 35 of P.L. , c. (C.) (pending
37 before the Legislature as this bill); or by certain unit owners under
38 subsection b. of section 31 of P.L. , c. (C.) (pending before the
39 Legislature as this bill), subsection a. of section 35 of P.L. , c.
40 (C.) (pending before the Legislature as this bill), subsection b. of
41 section 37 of P.L. , c. (C.) (pending before the Legislature as
42 this bill), or subsection b. of section 40 of P.L. , c. (C.)
43 (pending before the Legislature as this bill); or by the executive board
44 in accordance with subsection b. of section 51 of P.L. , c. (C.)
45 (pending before the Legislature as this bill), and except as limited by
46 subsection d. of this section, the declaration, including any plats and

1 plans, shall be amended only by vote or agreement of unit owners of
2 units representing at least 67 percent of a quorum of the members,
3 which quorum may not be less than 50 percent of the membership in
4 the association qualified to vote, provided the proposed amendment
5 does not seek to prohibit a previously permitted use in a unit. In the
6 case of an amendment that seeks to prohibit a previously permitted use
7 in a unit, the amendment must be approved by a vote of at least 67
8 percent of the total allocated votes in the association. The declaration
9 may specify a smaller number only if all of the units are restricted
10 exclusively to non-residential use.

11 b. An action to challenge the validity of an amendment adopted by
12 an association pursuant to this section, other than an action by a
13 governmental official or entity authorized to do so by statute or
14 regulation adopted pursuant to statute, shall not be brought more than
15 one year after the amendment is recorded.

16 c. Every amendment to a declaration shall be recorded in every
17 county in which any portion of the common interest community is
18 located and shall be effective only upon recordation. An amendment,
19 except an amendment pursuant to subsection a. of section 35 of
20 P.L. , c. (C.) (pending before the Legislature as this bill), shall
21 be indexed in the grantee's index in the name of the common interest
22 community and the association and in the grantor's index in the name
23 of the parties executing the amendment.

24 d. Except to the extent expressly permitted or required by other
25 provisions of P.L. , c. (C.) (pending before the Legislature as this
26 bill), an amendment shall not create or increase special declarant
27 rights, increase the number of units or change the boundaries of any
28 unit or the allocated interests of a unit in the absence of unanimous
29 consent of the unit owners.

30 e. Amendments to the declaration required by P.L. , c. (C.)
31 (pending before the Legislature as this bill) to be recorded by the
32 association shall be prepared, executed, recorded, and certified on
33 behalf of the association by any officer of the association designated
34 for that purpose or, in the absence of designation, by the president of
35 the association.

36 f. Within 12 months following assumption by the owners of control
37 of the executive board, and at six-year intervals thereafter, the
38 executive board shall re-examine the bylaws, declaration and rules of
39 the association and present such proposed amendments as the
40 executive board may deem appropriate, as well as any amendments
41 proposed by initiative signed by persons eligible to cast at least 20
42 percent of the votes, for approval by vote of the unit owners;
43 provided, however, that any such proposed amendment shall be
44 unambiguous and consistent with applicable law and with the
45 provisions of the governing documents that are not proposed to be
46 amended. Notwithstanding the terms of the declaration or bylaws, an

1 amendment to an existing bylaw, rule or declaration, except an
2 amendment that proposes to prohibit a previously permitted use, may
3 be adopted pursuant to this section by the lesser of: (1) a majority of
4 votes that are entitled to be cast by all unit owners; or (2) 67 percent
5 of the votes actually cast, where not less than a majority of the eligible
6 votes have been cast. An amendment that proposes to prohibit a
7 previously permitted use may be adopted only in accordance with the
8 terms of subsection a of section 41 of P.L. , c. (C.) (pending
9 before the Legislature as this bill). At least 30 days advance notice of
10 any referendum, including the text of any new bylaw or amendment or
11 repeal of an existing provision to be voted on, shall be given to all unit
12 owners by registered or certified mail, or by personal delivery.
13 Changes to declarations, bylaws and rules shall be applied
14 prospectively and shall not be construed as depriving any unit owner
15 of a right exercised prior to the time that the change is made;
16 provided, however, that any right relating to personal property, a
17 physical improvement or a pet that was exercised prior to the adoption
18 of any change to the declaration, bylaws or rules shall apply only to
19 the specific item of personal property, physical improvement or pet
20 existing or present at the unit on the effective date of the change. An
21 item of personal property or a physical improvement that violates the
22 terms of a change to the declaration, bylaws or rules shall not continue
23 to be maintained after suffering damage to more than 50 percent of its
24 value.

25 g. The time limits specified in the declaration pursuant to
26 paragraph (8) of subsection a. of section 28 of P.L. , c. (C.)
27 (pending before the Legislature as this bill) within which reserved
28 development rights must be exercised shall be extended, and additional
29 development rights may be created, if persons entitled to cast at least
30 80 percent of the votes in the association, including 80 percent of the
31 votes allocated to units not owned by the declarant, agree to that
32 action. The agreement shall be effective 30 days after an amendment
33 to the declaration reflecting the terms of the agreement is recorded,
34 unless all the persons holding the affected special declarant rights or
35 security interest in those rights:

36 (1) record a written objection within that 30-day period, in which
37 case the amendment shall be void; or

38 (2) consent in writing at the time the amendment is recorded, in
39 which case the amendment shall be effective when recorded.

40

41 42. (New section) a. Except in the case of a taking of all the units
42 by eminent domain pursuant to section 7 of P.L. , c. (C.)
43 (pending before the Legislature as this bill) or in the case of
44 foreclosure against a cooperative of a security interest that has priority
45 over the declaration of that cooperative, a common interest community
46 may be terminated only by agreement of unit owners of units to which

1 at least 80 percent of the votes in the association are allocated, or any
2 larger percentage that the declaration specifies. The declaration may
3 specify a smaller percentage only if all of the units are restricted
4 exclusively to nonresidential uses.

5 b. An agreement to terminate shall be evidenced by the execution
6 of a termination agreement, or ratifications thereof, in the same
7 manner as a deed, by the requisite number of unit owners. The
8 termination agreement shall specify a date after which the agreement
9 will be void unless it is recorded before that date. A termination
10 agreement and all ratifications thereof shall be recorded in each county
11 in which a portion of the common interest community is situated and
12 shall be effective only upon recordation.

13 c. In the case of a condominium or planned community containing
14 only units having horizontal boundaries described in the declaration,
15 a termination agreement may provide that all of the common elements
16 and units of the common interest community shall be sold following
17 termination. If, pursuant to the agreement, any real estate in the
18 common interest community is to be sold following termination, the
19 termination agreement shall set forth the minimum terms of the sale.

20 d. In the case of a condominium or planned community containing
21 any units not having horizontal boundaries described in the
22 declaration, a termination agreement may provide for sale of the
23 common elements, but it shall not require that the units be sold
24 following termination, unless the declaration as originally recorded
25 provided otherwise or all the unit owners consent to the sale.

26 e. The association, on behalf of the unit owners, may contract for
27 the sale of real estate in a common interest community, but the
28 contract shall not be binding on the unit owners until approved
29 pursuant to subsections a. and b. of this section. If any real estate is to
30 be sold following termination, title to that real estate, upon
31 termination, shall vest in the association as trustee for the holders of
32 all interests in the units. Thereafter, the association shall have all
33 powers necessary and appropriate to effect the sale. Until the sale has
34 been concluded and the proceeds thereof distributed, the association
35 shall continue in existence with all of the powers it had before
36 termination. Proceeds of the sale shall be distributed to unit owners
37 and lien holders as their interests may appear, in accordance with
38 subsections h., i., and j. of this section. Unless otherwise specified in
39 the termination agreement, and as long as the association holds title to
40 the real estate, each unit owner and the unit owner's successors in
41 interest shall have an exclusive right to occupancy of the portion of the
42 real estate that formerly constituted the unit. During the period of that
43 occupancy, each unit owner and the unit owner's successors in interest
44 shall remain liable for all assessments and other obligations imposed
45 on unit owners by P.L. , c. (C.) (pending before the Legislature as this
46 bill) or the declaration.

1 f. In a condominium or planned community, if the real estate
2 constituting the common interest community is not to be sold
3 following termination, title to the common elements and, in a common
4 interest community containing only units having horizontal boundaries
5 described in the declaration, title to all the real estate in the common
6 interest community shall vest in the unit owners upon termination as
7 tenants in common in proportion to their respective interests as
8 provided in subsection j. of this section, and any liens encumbering
9 those units shall survive and be applicable to the property so vested.
10 While the tenancy in common exists, each unit owner and the unit
11 owner's successors in interest shall have an exclusive right to
12 occupancy of the portion of the real estate that formerly constituted
13 the unit.

14 g. Following termination of a common interest community, the
15 proceeds of any sale of real estate, together with the assets of the
16 association, shall be held by the association as trustee for unit owners
17 and holders of liens on the units as their interests may appear.

18 h. Following termination of a condominium or planned community,
19 creditors of the association holding liens on the units, which were
20 recorded, filed or otherwise perfected according to law, before
21 termination, may enforce those liens in the same manner as any lien
22 holder. All other creditors of the association shall be treated as if they
23 had perfected liens on the units immediately before termination.

24 i. In a cooperative, the declaration may provide that all creditors
25 of the association shall have priority over the interests of unit owners
26 and creditors of unit owners. In that event, following termination,
27 creditors of the association holding liens on the cooperative which
28 were recorded, filed or otherwise perfected according to law before
29 termination, may enforce their liens in the same manner as any lien
30 holder, and any other creditor of the association shall be treated as if
31 the creditor had perfected a lien against the cooperative immediately
32 before termination. Unless the declaration provides that all creditors
33 of the association have that priority:

34 (1) The lien of each creditor of the association which was perfected
35 against the association before termination shall become, upon
36 termination, a lien against each unit owner's interest in the unit as of
37 the date the lien was perfected;

38 (2) Any other creditor of the association shall be treated upon
39 termination as if the creditor had perfected a lien against each unit
40 owner's interest immediately before termination;

41 (3) The amount of the lien of an association's creditor described in
42 paragraphs (1) and (2) of this subsection against each of the unit
43 owners' interest shall be proportionate to the ratio which each unit's
44 common expense liability bears to the common expense liability of all
45 of the units;

46 (4) The lien of each creditor of each unit owner which was

1 perfected before termination shall continue as a lien against that unit
2 owner's unit as of the date the lien was perfected; and

3 (5) The assets of the association shall be distributed to all unit
4 owners and all lien holders as their interests may appear in the order
5 described in this section. Creditors of the association shall not be
6 entitled to payment from any unit owner in excess of the amount of the
7 creditor's lien against that unit owner's interest.

8 j. The respective interests of unit owners referred to in subsections
9 e., f., g., h., and i. of this section shall be as follows:

10 (1) Except as provided in paragraph (2) of this subsection, the
11 respective interests of unit owners shall be the fair market values of
12 their units, allocated interests and any limited common elements
13 immediately before the termination, as determined by one or more
14 independent appraisers selected by the association. The decision of the
15 independent appraisers shall be distributed to the unit owners and shall
16 become final unless disapproved, within 30 days after distribution, by
17 unit owners of units to which 25 percent of the votes in the association
18 are allocated. The proportion of any unit owner's interest to that of all
19 unit owners shall be determined by dividing the fair market value of
20 that unit owner's unit and its allocated interests by the total fair market
21 values of all the units and their allocated interests.

22 (2) If any unit or any limited common element is destroyed to the
23 extent that an appraisal of the fair market value thereof before
24 destruction cannot be made, the interests of all unit owners shall be:
25 (a) in a condominium, their respective common element interests
26 immediately before the termination; (b) in a cooperative, their
27 respective ownership interests immediately before the termination, and
28 (c) in a planned community, their respective common expense
29 liabilities immediately before the termination.

30 k. In a condominium or planned community, except as provided in
31 subsection l. of this section, foreclosure or enforcement of a lien or
32 encumbrance against the entire common interest community shall not,
33 of itself, terminate the common interest community, and foreclosure
34 or enforcement of a lien or encumbrance against a portion of the
35 common interest community, other than withdrawable real estate, shall
36 not withdraw that portion from the common interest community.
37 Foreclosure or enforcement of a lien or encumbrance against
38 withdrawable real estate, or against common elements that have been
39 subjected to a security interest by the association under section 64 of
40 P.L. 2001, c. 287 (C. 17:27) (pending before the Legislature as this bill), shall
41 not, of itself, withdraw, that real estate from the common interest
42 community, but the person taking title thereto may require from the
43 association, upon request, an amendment excluding the real estate
44 from the common interest community.

45 l. In a condominium or planned community, if a lien or
46 encumbrance against a portion of the real estate comprising the

1 common interest community has priority over the declaration, and the
2 lien or encumbrance has not been partially released, then the parties
3 foreclosing the lien or encumbrance, upon foreclosure, may record an
4 instrument excluding the real estate subject to that lien or
5 encumbrance from the common interest community.

6 m. No agreement or governmental action to be taken which will
7 result in the termination of a common interest community with
8 common elements to remain after such termination, shall be effective
9 unless there shall be provision made for the maintenance of those
10 common elements.

11

12 43. (New section) a. The declaration may require that all or a
13 specified number or percentage of the lenders who hold security
14 interests encumbering the units or who have extended credit to the
15 association approve specified actions of the unit owners or the
16 association as a condition to the effectiveness of those actions, but no
17 requirement for approval shall operate to,

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

20 (2) prevent the association or the executive board from
21 commencing, intervening in, or settling any litigation or proceeding,
22 or

23 (3) prevent any insurance trustee or the association from receiving
24 and distributing any insurance proceeds except pursuant to section 61
25 of P.L. , c. (C.) (pending before the Legislature as this bill).

26 b. A lender who has extended credit to an association secured by
27 an assignment of income pursuant to paragraph (14) of subsection a.
28 of section 49 P.L. , c. (C.) (pending before the Legislature as
29 this bill) or an encumbrance on the common elements pursuant to
30 section 60 of P.L. , c. (C.) (pending before the Legislature as
31 this bill) may enforce its security agreement in accordance with its
32 terms, subject to the requirements of P.L. , c. (C.) (pending
33 before the Legislature as this bill) and other law.

34

35 44. (New section) a. If the declaration provides that any of the
36 powers described in section 49 of P.L. , c. (C.) (pending
37 before the Legislature as this bill) are to be exercised by, or may be
38 delegated to, a profit or nonprofit corporation that exercises those or
39 other powers on behalf of one or more common interest communities
40 or for the benefit of the unit owners of one or more common interest
41 communities, all provisions of P.L. , c. (C.) (pending before the
42 Legislature as this bill) applicable to unit owners' associations shall
43 apply to any such corporation, except as modified by this section.

44 b. Unless it is acting in the capacity of an association described in
45 section 48 of P.L. , c. (C.) (pending before the Legislature as
46 this bill), a master association may exercise the powers set forth in

1 paragraph (2) of subsection a. of section 49 of P.L. , c. (C.)
2 (pending before the Legislature as this bill) only to the extent expressly
3 permitted in the declarations of common interest communities which
4 are part of the master association or expressly described in the
5 delegations of power from those common interest communities to the
6 master association.

7 c. If the declaration of any common interest community provides
8 that the executive board may delegate certain powers to a master
9 association, the members of the executive board shall have no liability
10 for the acts or omissions of the master association with respect to
11 those powers following delegation.

12 d. The rights and responsibilities of unit owners with respect to the
13 unit owners' association as set forth in sections 49, 50, 51, 56, 57, 58
14 and 60 of P.L. , c. (C.) (pending before the Legislature as this
15 bill) shall apply, in the conduct of the affairs of a master association,
16 only to persons who elect the board of a master association, whether
17 or not those persons are otherwise unit owners within the meaning of
18 P.L. , c. (C.) (pending before the Legislature as this bill).

19 e. Regardless of the fact that a master association also may be an
20 association, as described in section 48 of P.L. , c. (C.)
21 (pending before the Legislature as this bill), the certificate of
22 incorporation, or other instrument creating the master association, and
23 the declaration of each common interest community, the powers of
24 which are assigned by the declaration or delegated to the master
25 association, shall provide that the executive board of the master
26 association shall be elected after the period of declarant control in any
27 of the following ways:

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

31 (2) All of the members of the executive boards of all common
32 interest communities subject to the master association may elect all
33 members of the master association's executive board.

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

37 (4) All of the members of the executive board of each common
38 interest community subject to the master association may elect
39 specified members of the master association's executive board.

40

41 45. (New section) a. Any two or more common interest
42 communities of the same form of ownership, by agreement of the unit
43 owners as provided in subsection b. of this section, may be merged or
44 consolidated into a single common interest community. In the event of
45 a merger or consolidation, unless the agreement otherwise provides,
46 the resultant common interest community shall be the legal successor,

1 for all purposes, of all of the pre-existing common interest
2 communities, and the operations and activities of all associations of the
3 pre-existing common interest communities shall be merged and
4 consolidated into a single association that shall hold all of the powers,
5 rights, obligations, assets, and liabilities of the pre-existing
6 associations.

7 b. An agreement of two or more common interest communities to
8 merge or consolidate pursuant to subsection a. of this section shall be
9 evidenced by an agreement prepared, executed, recorded, and certified
10 by the president of the association of each of the pre-existing common
11 interest communities following approval by the owners of units to
12 which are allocated the percentage of votes in each common interest
13 community required to terminate that common interest community.
14 The agreement shall be recorded in each county in which a portion of
15 the common interest community is located and shall not be effective
16 until recorded.

17 c. When a merger of two or more common interest communities
18 involves the merger of two or more nonprofit corporations, the
19 corporations shall comply with all of the requirements of
20 N.J.S.15A:10-1.

21 d. Every merger or consolidation agreement shall provide for the
22 reallocation of the allocated interests in the pre-existing associations
23 among the units of the resultant common interest community either

24 (1) by stating the reallocations or the formulas upon which they are
25 based or

26 (2) by stating the percentage of overall allocated interests of the
27 new common interest community that shall be allocated to all. All of
28 the units comprising each of the pre-existing common interest
29 communities, and providing that the portion of the percentages
30 allocated to each unit formerly comprising a part of the pre-existing
31 common interest community shall be equal to the percentages of
32 allocated interests allocated to that unit by the declaration of the
33 pre-existing common interest community.

34
35 46. (New section) In a planned community, if the right is originally
36 reserved in the declaration, the declarant, in addition to any other
37 development right, may amend the declaration at any time during as
38 many years as are specified in the declaration for adding additional real
39 estate to the planned community without describing the location of
40 that real estate in the original declaration. The amount of real estate
41 added to the planned community pursuant to this section shall not
42 exceed 10 percent of the real estate described in paragraph (3) of
43 subsection a. of section 28 of P.L. , c. (C.) (pending before
44 the Legislature as this bill) and the declarant shall not in any event
45 increase the number of units in the planned community beyond the
46 number stated in the original declaration pursuant to paragraph (4) of

1 subsection a. of section 28 of P.L. , c. (C.) (pending before
2 the Legislature as this bill), unless unit owners, other than the
3 declarant, that represent at least 51 percent of the votes in the
4 association, vote to approve: a. the addition of real estate in excess of
5 10 percent of the real estate described in paragraph (3) of subsection
6 a. of section 28 of P.L. , c. (C.) (pending before the
7 Legislature as this bill), or b. a number of units in excess of the number
8 stated in the original declaration pursuant to paragraph (4) of
9 subsection a. of section 28 of P.L. , c. (C.) (pending before
10 the Legislature as this bill).

11

12 47. (New section) a. The declaration for a common interest
13 community may state that it is a master planned community if the
14 declarant has reserved the development right to create at least 300
15 units that may be used for residential purposes and has obtained
16 preliminary site plan or subdivision approval permitting the declarant
17 to construct at least 300 residential units pursuant to the "Municipal
18 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

19 b. If the requirements of subsection a. of this section are satisfied,
20 the declaration for the master planned community need not state a
21 maximum number of units and need not contain any of the information
22 required by paragraphs (3) through (13) of subsection a. of section 28
23 of P.L. , c. (C.) (pending before the Legislature as this bill)
24 until the declaration is amended under subsection c. of this section.

25 c. At the time each unit in a master planned community is conveyed
26 to a purchaser, the declaration must contain,

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

30 (2) all of the information required by paragraphs (3) through (13)
31 of subsection a. of section 28 of P.L. , c. (C.) (pending before
32 the Legislature as this bill) with respect to that real estate.

33 d. Notwithstanding any other provision of P.L. , c. (C.)
34 (pending before the Legislature as this bill):

35 (1) The only real estate in a master planned community which shall
36 be subject to P.L. , c. (C.) (pending before the Legislature as
37 this bill) is that which comprises:

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

40 (b) any other real estate described pursuant to subsection c. of this
41 section;

42 (2) Other real estate that is or may become part of the master
43 planned community shall be subject only to other applicable laws and
44 to any other restrictions and limitations that appear of record; and

45 (3) If the public offering statement conspicuously identifies the fact
46 that the community is a master planned community, the disclosure

1 requirements contained in sections 73 through 88 of P.L. , c. (C.)
2 (pending before the Legislature as this bill) shall apply only with
3 respect to units that have been declared or are being offered for sale
4 in connection with the public offering statement and to the real estate
5 described in subsection c. of this section.

6 e. The limitations contained in section 46 of P.L. , c. (C.)
7 (pending before the Legislature as this bill) shall not apply to a master
8 planned community.

9 f. Subject to the requirements of unconscionability in section 12
10 of P.L. , c. (C.) (pending before the Legislature as this bill)
11 and good faith in section 13 of P.L. , c. (C.) (pending before
12 the Legislature as this bill), the period of declarant control of the
13 association for a master planned community shall terminate in the
14 manner set forth in section 51 of P.L. , c. (C.) (pending before
15 the Legislature as this bill), at such earlier time as may be specified in
16 the declaration, or as the declarant specifies in a recorded instrument
17 after delivering written notice to all the unit owners in the same
18 manner as notice is required for an amendment to the declaration.

19

20

ARTICLE 3

21

MANAGEMENT OF THE COMMON INTEREST COMMUNITY

22

23
24 48. (New section) A unit owners' association shall be formed on
25 or before the date of recording of the declaration. The membership of
26 the association at all times shall consist exclusively of all of the unit
27 owners or, following termination of the common interest community,
28 of all of the former unit owners entitled to distributions of proceeds
29 under section 42 of P.L. , c. (C.) (pending before the
30 Legislature as this bill) or their heirs, successors or assigns. An
31 association shall be organized as a for-profit or nonprofit corporation,
32 trust, or partnership.

33 Process may be served upon a unit owners' association by serving
34 the president or chief executive officer of the association or by serving
35 the agent designated for service of process. Service of process upon
36 the association shall not constitute service of process upon any
37 individual unit owner.

38

39 49. (New section) a. An association, acting through its executive
40 board, and in addition to any specific requirements contained in other
41 provisions of P.L. , c. (C.) (pending before the Legislature as
42 this bill), shall be responsible for the performance of the following
43 duties:

44 (1) The maintenance, repair, replacement, cleaning, and sanitation
45 of the common elements.

46 (2) The adoption, distribution, amendment, and enforcement of

1 rules governing the use and operation of the common interest
2 community.

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

14 (4) The association shall have access to each unit from time to time
15 during reasonable hours, and upon five days' prior written notice
16 stating the reason that access is required, for,

17 (a) the maintenance, repair or replacement of any common elements
18 therein or accessible therefrom;

19 (b) the repair, replacement or inspection of common elements in
20 compliance with an order of a State or local agency having
21 jurisdiction;

22 (c) for the maintenance of the common elements in accordance with
23 a policy that has been approved by the executive board;

24 (d) inspection to ensure compliance with requirements of State or
25 local code enforcing agencies or insurance carriers or underwriters; or

26 (e) emergency repairs necessary to prevent damage to common
27 elements or to any other unit or units (the foregoing being individually
28 or in the aggregate referred to as a "permitted right of entry");
29 provided, however, that the association shall not require a unit owner
30 to provide a unit key to any person. Nothing herein shall prohibit the
31 association from having immediate access to a unit in case of an
32 emergency. A unit owner who refuses to provide a unit access key to
33 an association that requests one for a permitted right of entry shall be
34 responsible for all reasonable costs of the association to obtain access
35 to the unit; provided, however, that the association shall secure the
36 unit after the purpose of any entry has been satisfied and shall, to that
37 end, utilize the services of a licensed locksmith, the cost of which
38 services shall be included in the reasonable cost of obtaining access,
39 and further provided that prior or concurrent notice of any entry
40 without a key shall be given to the police department having
41 jurisdiction. The association may charge the unit owner for the repair
42 of any common element damaged by the unit owner or his tenant.

43 (6) The association may purchase units in the common interest
44 community and otherwise acquire, hold, lease, mortgage, and convey
45 the same. It may also lease or license the use of common elements in
46 a manner not inconsistent with the rights of unit owners.

1 (7) An executive board of an association and any community
2 management personnel contracted by an association, shall be
3 responsible for safeguarding and preserving all common elements
4 within the common interest community, so as to comply with all
5 applicable laws and to protect the investment made by the owners of
6 the lots, parcels, units, or interests subject to the jurisdiction of the
7 association and also shall enforce rules requiring the proper
8 maintenance of such common elements. Executive boards and
9 community managers shall comply with all rules that may be adopted
10 by the commissioner, including, but not limited to, accounting
11 procedures and financial and common property facility management
12 requirements, provided such rules shall not include substantive
13 requirements not otherwise set forth in P.L. , c. (C.) (pending
14 before the Legislature as this bill).

15 b. Except as provided in subsection c. of this section, and subject
16 to the provisions of the declaration, the bylaws or other statute of this
17 State, an association may:

18 (1) adopt and amend bylaws and rules and regulations, provided
19 that any rules or regulations adopted by resolution of an association
20 shall be recorded in the same place as the bylaws;

21 (2) adopt and amend budgets for revenues, expenditures and
22 reserves and may collect assessments for common expenses from unit
23 owners, provided, that with respect to the adoption of budgets for
24 revenues, expenditures and reserves in common interest communities
25 of 100 or more units, a copy of any proposed budget shall be available
26 at a meeting of the executive board at least one month prior to the
27 meeting at which the executive board is scheduled to vote on the
28 budget;

29 (3) hire and discharge managing agents and other employees,
30 agents and independent contractors;

31 (4) institute, defend or intervene in litigation or administrative
32 proceedings in its own name on matters affecting the common interest
33 community;

34 (5) make contracts and incur liabilities, subject to the provisions of
35 section 71 of P.L. , c. (C.) (pending before the Legislature as
36 this bill);

37 (6) regulate the use, maintenance, repair, replacement, cleaning and
38 modification of common elements, including, if authorized under the
39 by-laws, the right to suspend the use of the common elements,
40 including, without limitation, parking spaces or recreational facilities,
41 whenever a unit owner is delinquent in the payment of common
42 expenses;

43 (7) cause additional improvements to be made as a part of the
44 common elements;

45 (8) acquire, hold, encumber and convey in its own name any right,
46 title or interest to real estate or personal property, but (a) common

1 elements in a condominium or planned community shall only be
2 conveyed or subjected to a security interest pursuant to section 60 of
3 P.L. , c. (C.) (pending before the Legislature as this bill), and
4 (b) part of a cooperative shall only be conveyed, or all or part of a
5 cooperative shall only be subjected to a security interest, pursuant to
6 section 60 of P.L. , c. (C.) (pending before the Legislature as
7 this bill). The association may also acquire or enter into agreements
8 whereby it acquires leaseholds, memberships or other possessory or
9 use interests in lands or facilities including, but not limited to, country
10 clubs, golf courses, marinas, and other recreational facilities, whether
11 or not contiguous to the common interest community property,
12 intended to provide for the enjoyment, recreation or other use or
13 benefit of the unit owners. If fully described in the declaration or
14 bylaws, the fees, costs and expenses of acquiring, maintaining,
15 operating, repairing, and replacing any such memberships, interests
16 and facilities shall be common expenses. If not so described in the
17 declaration or bylaws as originally recorded, no such membership
18 interest or facility shall be acquired except pursuant to amendment of,
19 or supplement to, the declaration or bylaws duly adopted as provided
20 therein and in P.L. , c. (pending before the Legislature as this bill). In
21 the absence of such amendment or supplement, if some but not all unit
22 owners desire any such acquisition and agree to assume among
23 themselves all costs of acquisition, maintenance, operation, repair, and
24 replacement thereof, the association may acquire or enter into an
25 agreement to acquire the same as limited common elements
26 appurtenant only to the units of those unit owners who have agreed to
27 bear the costs and expenses thereof. Such costs and expenses shall be
28 assessed against and collected from the consenting unit owners in the
29 proportions in which they share as among themselves in the common
30 expenses in the absence of some other unanimous agreement among
31 themselves. No other unit owner shall be charged with any such cost
32 or expense; provided, however, that nothing herein shall preclude the
33 extension of the interests in such limited common elements to
34 additional unit owners by subsequent agreement with all those unit
35 owners then having an interest in such limited common elements.
36 Thereafter, any such costs or expenses shall be paid only by the
37 consenting unit owners and their grantees, heirs and assigns;

38 (9) grant easements, leases, licenses, and concessions through or
39 over the common elements;

40 (10) impose and receive any payments, fees or charges for the use,
41 rental or operation of the common elements, other than limited
42 common elements described in subsections b. or d. of section 25 of
43 P.L. , c. (C.) (pending before the Legislature as this bill), and
44 for services provided to unit owners;

45 (11) levy and collect assessments duly made by the association for
46 a share of common expenses or any other moneys duly owed the

1 association, upon proper notice to the appropriate unit owner,
2 together with interest thereon, late fees and reasonable attorney's fees,
3 if authorized by the declaration or bylaws, and subject to the
4 provisions of section 50 of P.L. , c. (C.) (pending before the
5 Legislature as this bill). A unit owner may contest the validity of any
6 assessment levied by an association for the purpose of funding
7 construction of any improvement by bringing an action in lieu of
8 prerogative writs in the Superior Court within 45 days after the
9 association gives notice of the assessment to unit owners;

10 (12) impose reasonable charges for the preparation and recordation
11 of amendments to the declaration, resale certificates required by
12 section 77 of P.L. , c. (C.) (pending before the Legislature as
13 this bill), or statements of unpaid assessments;

14 (13) provide for the indemnification of its officers and executive
15 board and maintain directors' and officers' liability insurance;

16 (14) assign its right to future income, including the right to receive
17 common expense assessments, but only to the extent the declaration
18 expressly so provides;

19 (15) notwithstanding the provisions of the "Prudent Investor Act,"
20 P.L.1997, c.26 (C.3B:20-11.1 et seq.), or any other law to the
21 contrary, invest the assets of the association and the proceeds thereof,
22 in good faith and with that degree of diligence, care and skill which
23 ordinary prudent persons would exercise under similar circumstances
24 in like positions. In discharging their duties, members of the executive
25 board shall not be liable if, acting in good faith, they rely upon the
26 opinion of counsel for the association or upon written reports setting
27 forth financial data concerning the association and prepared by an
28 independent public account or certified public accountant or firm of
29 accountants or upon financial statements, books of account or reports
30 of the association represented to them to be correct by the chief
31 executive officer, the officer of the association having charge of its
32 books of account, or the persons presiding at a meeting of the
33 executive board;

34 (16) exercise any other powers conferred by the declaration or
35 bylaws in accordance with P.L. , c. (C.) (pending before the
36 Legislature as this bill);

37 (17) exercise all other powers that may be exercised in this State
38 by legal entities of the same type as the association, if not prohibited
39 by P.L. , c. (C.) (pending before the Legislature as this
40 bill) or any other law of the State; and

41 (18) exercise any other powers necessary and proper for the
42 governance and operation of the association, if not prohibited by
43 P.L. , c. (C.) (pending before the Legislature as this bill) or
44 any other law of this State.

45 The executive board of every association shall discharge its powers
46 in a manner that is not inconsistent with furthering the health, safety

1 and general welfare of the residents of the common interest
2 community, fostering community values of fairness, mutual respect and
3 responsibility, and safeguarding the value of the residents' investment
4 in their properties.

5 c. The declaration shall not impose limitations on the power of the
6 association to deal with the declarant which are more restrictive than
7 the limitations imposed on the power of the association to deal with
8 other persons.

9 d. The association may adopt rules with respect to units that may
10 be used for residential purposes to:

11 (1) prevent any use of, or behavior in, residential units which
12 violates the declaration or adversely affects the use and enjoyment of
13 other units or the common elements by other unit owners; or

14 (2) reasonably restrict the leasing of residential units so long as the
15 rules are designed to meet the then-current underwriting requirements
16 adopted by institutional lenders who regularly lend money secured by
17 first mortgages on units in common interest communities, or regularly
18 purchase those mortgages.

19 Otherwise, an association shall not regulate any use of, or behavior in,
20 units unless empowered to do so by the declaration or P.L. , c.
21 (C.) (pending before the Legislature as this bill).

22 e. If a tenant of a unit owner violates the declaration, bylaws or
23 rules or regulations of the association, in addition to exercising any of
24 its powers against the unit owner, an association may:

25 (1) exercise directly against the tenant the powers described in
26 section 50 of P.L. , c. (C.) (pending before the Legislature as
27 this bill);

28 (2) after giving notice to the tenant and the unit owner and an
29 opportunity to be heard, levy reasonable fines against the tenant for
30 the violation; and

31 (3) enforce any rights against the tenant for the violation which the
32 unit owner as landlord might have exercised under the lease in
33 accordance with State law, or which the association might have
34 exercised directly against the unit owner, or both.

35 f. The rights granted under paragraph (3) of subsection e. may be
36 exercised only if the tenant or unit owner fails to cure the violation
37 within 10 days after the association notifies both the tenant and unit
38 owner of that violation.

39 g. Unless a lease otherwise provides, this section shall not,

40 (1) affect rights that a unit owner may have to enforce a lease or
41 that the association has under other law; or

42 (2) permit an association to enforce a lease to which it is not a party
43 in the absence of a violation of the declaration or bylaws or the
44 association's rules or regulations.

45

46 50. (New section) If authorized by the declaration or bylaws, the

1 association may impose reasonable fines upon unit owners for failure
2 to comply with provisions of the declaration, bylaws or rules and
3 regulations, subject to the following provisions:

4 A fine for a violation or a continuing violation of the declaration,
5 bylaws or rules and regulations shall not exceed \$25 per day for each
6 violation; \$50 per day for a second violation of the same nature within
7 a one-year period following the issuance of the notice of fine for the
8 first violation or, if it is contested, of a final determination upholding
9 the first fine; and \$100 per day for each violation of the same nature
10 after the second violation within a one-year period following the
11 issuance of the notice of fine for the second violation or, if it is
12 contested, of a final determination upholding the second fine. An initial
13 fine shall be imposed only after a warning notice has been issued to
14 notify the owner to cease or correct the violation and that notice has
15 not been complied with.

16 On roads, streets, parking areas, driveways, or other roadways with
17 respect to which Title 39 of the Revised Statutes is in effect under
18 section 1 of P.L.1945, c.284 (C.39:5A-1), an association may impose
19 fines only for violations not subject to enforcement by State or local
20 police.

21 A fine shall not be imposed unless the unit owner is given written
22 notice of the action taken and of the alleged basis for the action, and
23 is advised of the right to participate in an alternative dispute resolution
24 procedure in accordance with section 86 of P.L. , c. (C.)
25 (pending before the Legislature as this bill). A unit owner who does
26 not believe that the mediation phase of the alternative dispute
27 resolution procedure has satisfactorily resolved the matter and who
28 does not agree to continue the procedure as binding arbitration shall
29 not be prevented from seeking a judicial remedy in a court of
30 competent jurisdiction. No lien shall be recorded concerning a fine
31 imposed by an association after the effective date of P.L. , c. (C.)
32 (pending before the Legislature as this bill) unless: (1) the right to the
33 lien has been established pursuant to a determination by a court of
34 competent jurisdiction, or (2) the fine imposition has been authorized
35 through alternative dispute resolution proceedings pursuant to section
36 86 of P.L. , c. (C.) (pending before the Legislature as this
37 bill), or (3) the unit owner has been notified by the association, by
38 personal service or by registered or certified mail, return receipt
39 requested, of the unit owner's right to have the dispute resolved
40 through alternative dispute resolution proceedings and has not
41 requested such proceedings within 30 days of receipt of such notice or
42 has, after requesting such proceedings, failed or refused to participate
43 in them or discontinued such participation. If service is made by
44 registered or certified mail, the date of receipt shall be deemed to be
45 the date the mail is accepted or three days following the date of
46 mailing, whichever comes first.

1 51. (New section) a. Except as provided in the declaration, the
2 bylaws, subsection b. of this section, or other provisions of P.L. ,
3 c. (C.) (pending before the Legislature as this bill), an executive
4 board may act in all instances on behalf of the association. In the
5 performance of their duties, officers and members of an executive
6 board shall act in good faith and exercise honest judgment in lawful
7 and legitimate furtherance of the association's purposes.

8 Notwithstanding the provisions of P.L. , c. (C.) (pending
9 before the Legislature as this bill) or any other law, an individual
10 convicted of a crime of the first or second degree, or a crime of a
11 fiduciary nature of any degree while serving as an officer or member
12 of an executive board shall be deemed to have resigned that position
13 immediately upon entry of judgment of conviction. An individual who
14 has been convicted of a crime of the first or second degree, or a crime
15 of a fiduciary nature of any degree prior to an election to serve as an
16 officer or member of an executive board, shall disclose, in writing on
17 the ballot, such a conviction if it occurred within a three- year period
18 prior to the election. The election of a person who does not disclose
19 shall be void from its inception.

20 b. An executive board shall not act on behalf of the association to:

21 (1) amend the declaration pursuant to section 41 of P.L. , c.
22 (C.) (pending before the Legislature as this bill), except when
23 necessary to render an inconsistent portion of the declaration to be
24 consistent with applicable law, but only to the extent necessary to
25 achieve consistency;

26 (2) terminate the common interest community under section 42 of
27 P.L. , c. (C.) (pending before the Legislature as this bill); or

28 (3) elect members of the executive board or determine the
29 qualifications, powers, duties, or terms of office of executive board
30 members pursuant to subsection f. of this section; however, the
31 executive board may fill vacancies in its membership until the next
32 annual meeting of the membership at which a quorum is present, at
33 which time the membership shall elect a member to fill the vacancy for
34 the then unexpired portion of the term that was vacated.

35 c. Within 30 days after the adoption of a budget for a common
36 interest community, the executive board shall provide a copy of the
37 budget to all of the unit owners.

38 d. Subject to subsection e. of this section, the declaration may
39 provide for a period of declarant control of the association, during
40 which a declarant, or persons designated by him, may appoint and
41 remove the officers and members of the executive board. Regardless
42 of the period provided in the declaration, a period of declarant control
43 of the executive board shall terminate no later than the earlier of:

44 (1) 60 days after conveyance of 75 percent of the lots, parcels,
45 units, or interests that may be created to unit owners other than a
46 declarant; (2) two years after all declarants have ceased to offer units

1 for sale in the ordinary course of business;

2 (3) two years after any right to add new units was last exercised; or

3 (4) if, at a duly held meeting of the association, the majority of the

4 unit owners appearing in person or by proxy vote to assume control,

5 the date the declarant, after giving written notice to unit owners,

6 records an instrument voluntarily surrendering all rights to control

7 activities of the association. A declarant may voluntarily surrender the

8 right to appoint and remove officers and members of the executive

9 board before termination of that period, but in that event the declarant

10 may require, for the duration of the period of declarant control, that

11 specified actions of the association or executive board, as described in

12 a recorded instrument executed by the declarant, be approved by the

13 declarant before they become effective.

14 e. Not later than 60 days after conveyance to unit owners, other than

15 a declarant, of 25 percent of the lots, parcels, units, or interests that

16 may be created, at least one member and not less than 25 percent of

17 the members of the executive board shall be elected by unit owners

18 other than a declarant. Not later than 60 days after conveyance to unit

19 owners other than a declarant of 50 percent of the lots, parcels, units

20 or interests that may be created, not less than 40 percent of the

21 members of the executive board shall be elected by unit owners other

22 than a declarant. Not later than 60 days after conveyance of 75 percent

23 of the lots, parcels, units, or interests that may be created, not less

24 than 60 percent of the members of the executive board shall be elected

25 by the unit owners other than declarant; except that the declarant may

26 retain the selection of one executive board member so long as there

27 are any units remaining unsold in the regular course of business. The

28 percentages specified in this section shall be calculated upon the basis

29 of the whole number of units entitled to membership in the association.

30 f. Except as otherwise provided in subsection e. of section 44 of

31 P.L. , c. (C.) (pending before the Legislature as this bill), but

32 not later than the termination of any period of declarant control, the

33 unit owners shall elect an executive board of at least three members,

34 a majority of whom shall be unit owners. The executive board shall

35 elect the officers. The executive board members and officers shall take

36 office upon election.

37 g. Upon assumption by the owners of control of the executive

38 board of the association, the declarant shall forthwith deliver to the

39 association all property of the unit owners, and all items and

40 documents pertinent to the association, such as, but not limited to, a

41 copy of the master declaration, declaration of covenants and

42 restrictions, documents of creation of the association, bylaws, minute

43 book including all minutes, any rules and regulations, association funds

44 and an accounting therefor, that includes capital accounts and

45 contributions, all personal property, insurance policies, government

46 permits, a membership roster, all contracts and agreements relative to

1 the association, resignations of officers and members of the governing
2 board or other form of administration who are required to resign
3 because the developer is required to relinquish control of the
4 association, all tangible personal property that is property of the
5 association and is either represented by the developer to be part of the
6 common elements or ostensibly part of the common elements, and an
7 inventory of that property. Within 60 days of completion of
8 construction or remodeling of improvements, the declarant shall
9 provide the association with a copy of the plans and specifications
10 utilized in the construction or remodeling of improvements and the
11 supplying of equipment to the common interest community, and
12 utilized in the construction and installation of all mechanical
13 components serving the improvements and the site. The declarant also
14 shall provide the association with a certificate in affidavit form of the
15 developer, his agent, or an architect or engineer authorized to practice
16 in this State that such plans and specifications represent, to the best of
17 their knowledge and belief, the actual plans and specifications utilized
18 in the construction and improvement of the common interest property
19 and for the construction and installation of the mechanical components
20 serving the improvements.

21 h. An association, when controlled by the owners, shall not take
22 any action that would be detrimental to the sale of units by the
23 declarant, and shall continue the same level of maintenance, operation
24 and services as immediately prior to the unit owners' assumption of
25 control, until the last unit is sold.

26 i. Notwithstanding any provision of a declaration or bylaws to the
27 contrary, the unit owners, by a two-thirds vote of all persons present
28 and entitled to vote at any meeting of the unit owners at which a
29 quorum is present, may remove any member of the executive board
30 with or without cause, other than a member appointed by the
31 declarant.

32 j. The members of the executive board appointed by the declarant
33 shall be liable as fiduciaries for their acts or omissions.

34 k. Not more than 60 days after the time that unit owners, other
35 than the developer, elect a majority of the members of the executive
36 board or other form of administration of an association, the developer
37 shall relinquish control of the association and the unit owners shall
38 accept control. Simultaneously, the developer shall deliver to the
39 association all property of the unit owners and of the association held
40 or controlled by the developer, including, but not limited to, the
41 following items, if applicable, as to each common interest community
42 operated by the association:

43 (1) A photocopy of the declaration and all amendments thereto,
44 certified by affidavit of the developer, or by an officer or agent of the
45 developer, as being a complete copy of the actual declaration.

46 (2) A certified copy of the association's articles of incorporation, or

- 1 if not incorporated, then copies of the documents creating the
2 association.
- 3 (3) A copy of the bylaws.
- 4 (4) The minute books, including all minutes, and other books and
5 records of the association, if any.
- 6 (5) Any rules and regulations which have been promulgated by the
7 executive board.
- 8 (6) Resignations of officers and members of the executive board or
9 other form of administration who are required to resign because the
10 developer is required to relinquish control of the association.
- 11 (7) An accounting for all association funds, including capital
12 accounts and contributions.
- 13 (8) Association funds or control thereof.
- 14 (9) All tangible personal property that is property of the
15 association, represented by the developer to be part of the common
16 elements or ostensibly part of the common elements, and an inventory
17 of that property.
- 18 (10) A copy of the plans and specifications utilized in the
19 construction or remodeling of improvements and the supplying of
20 equipment to and in the common interest community and utilized in the
21 installation of all mechanical components serving the improvements
22 and the site, along with a certificate in affidavit form of the developer,
23 his agent or an architect or engineer authorized to practice in this
24 State, that such plans and specifications represent, utilized in the
25 construction and improvement of the common interest community
26 property and for the construction and installation of the mechanical
27 components serving the improvements.
- 28 (11) Insurance policies.
- 29 (12) Copies of any certificates of occupancy which may have been
30 issued for the common interest property.
- 31 (13) Any other permits issued by governmental bodies having
32 jurisdiction over the common interest property that were issued in
33 connection with the development of the common interest property.
- 34 (14) All written warranties of the contractor, subcontractors,
35 suppliers, and manufacturers, if any, that are still effective.
- 36 (15) A roster of unit owners and their addresses and telephone
37 numbers as shown on the developer's records.
- 38 (16) Leases of the common elements and other leases to which the
39 association is a party.
- 40 (17) Employment contracts, management contracts, maintenance
41 contracts, contracts for the supply of equipment or materials, service
42 contracts in which the association is one of the contracting parties, and
43 maintenance contracts and service contracts in which the association
44 or the unit owners have an obligation or responsibility, directly or
45 indirectly to pay some or all of the fee or charge of the person or
46 persons performing the service.

1 (18) All other contracts to which the association is a party.

2

3 52. (New section) a. A special declarant right created or reserved
4 under P.L. , c. (C.) (pending before the Legislature as this bill)
5 shall be transferred only by an instrument evidencing the transfer and
6 recorded in each county in which any portion of the common interest
7 community is located. The instrument shall not be effective unless
8 executed by the transferee.

9 b. Upon the transfer of any special declarant right, the liability of
10 a transferor declarant shall be as follows:

11 (1) A transferor shall not be relieved of any obligation or liability
12 arising before the transfer and shall remain liable for warranty
13 obligations imposed upon him by P.L. , c. (C.) (pending before the
14 Legislature as this bill). Lack of privity shall not deprive any unit
15 owner of standing to maintain an action to enforce any obligation of
16 the transferor.

17 (2) If a successor to any special declarant right is an affiliate of a
18 declarant, as that term is defined in section 3 of P.L. , c. (C.)
19 (pending before the Legislature as this bill), the transferor shall be
20 jointly and severally liable with the successor for any obligations or
21 liabilities of the successor relating to the common interest community.

22 (3) If a transferor retains any special declarant rights, but transfers
23 other special declarant rights to a successor who is not an affiliate of
24 the declarant, the transferor shall be liable for any obligations or
25 liabilities imposed on a declarant by P.L. , c. (C.) (pending
26 before the Legislature as this bill) or by the declaration relating to the
27 retained special declarant rights and arising after the transfer.

28 (4) A transferor shall have no liability for any act or omission or any
29 breach of a contractual or warranty obligation arising from the
30 exercise of a special declarant right by a successor who is not an
31 affiliate of the transferor.

32 c. Unless otherwise provided in a mortgage instrument, deed of
33 trust or other agreement creating a security interest, in the case of a
34 foreclosure of a security interest, sale by a trustee under an agreement
35 creating a security interest, tax sale, judicial sale, or sale under federal
36 Bankruptcy Code or receivership proceedings of any units owned by
37 a declarant or of real estate in a common interest community subject
38 to development rights, a person acquiring title to all of the property
39 being foreclosed or sold, upon his request, shall succeed to all special
40 declarant rights related to that property held by that declarant or
41 holder of development rights; otherwise the person acquiring title shall
42 succeed only to those or to any rights reserved in the declaration
43 pursuant to section 39 of P.L. , c. (C.) (pending before the
44 Legislature as this bill) and held by that declarant to maintain models,
45 sales offices and signs. The judgment or instrument conveying title
46 shall provide for transfer of only those special declarant rights

1 requested.

2 d. Upon foreclosure of a security interest, sale by a trustee under
3 an agreement creating a security interest, tax sale, judicial sale, or sale
4 under federal Bankruptcy Code or receivership proceedings of all
5 interests in a common interest community owned by a declarant:

6 (1) The declarant shall cease to have any special declarant rights,
7 and

8 (2) The period of declarant control shall terminate unless the
9 judgment or instrument conveying title provides for the transfer of all
10 special declarant rights held by that declarant to a successor declarant.

11 e. The liabilities and obligations of a person who succeeds to
12 special declarant rights shall be as follows:

13 (1) A successor to any special declarant right who is an affiliate of
14 a declarant shall be subject to all obligations and liabilities imposed on
15 the transferor by P.L. , c. (C.)(pending before the Legislature
16 as this bill) or by the declaration.

17 (2) A successor to a sole right reserved in the declaration to
18 maintain models, sales offices, and signs under section 39 of P.L. ,
19 c. (C.) (pending before the Legislature as this bill) shall not
20 exercise any other special declarant right and shall not be subject to
21 any liability or obligation as a declarant except the obligation to
22 provide a public offering statement and any liability arising as a result
23 thereof.

24 (3) A successor to all special declarant rights held by a transferor
25 who succeeded to those rights pursuant to a deed or other instrument
26 of conveyance in lieu of foreclosure or a judgment or instrument
27 conveying title under subsection c. of this section, may declare in a
28 recorded instrument the intention to hold those rights solely for
29 transfer to another person. Thereafter, until transferring all special
30 declarant rights to any person acquiring title to any unit or real estate
31 subject to development rights owned by the successor, or until
32 recording an instrument permitting exercise of all those rights, that
33 successor shall not exercise any of those rights other than any right
34 held by his transferor to control the executive board in accordance
35 with subsection d. of section 51 of P.L. , c. (C.) (pending
36 before the Legislature as this bill) for the duration of any period of
37 declarant control, and any attempted exercise of those rights shall be
38 void. So long as a successor declarant may not exercise special
39 declarant rights under this subsection, the successor declarant shall not
40 be subject to any liability or obligation as a declarant other than
41 liability for his acts and omissions under subsection d. of section 51 of
42 P.L. , c. (C.) (pending before the Legislature as this bill).

43 (4) A successor to any special declarant right, other than a
44 successor described in paragraphs (1), (2) or (3) of this subsection
45 shall be subject to the obligations and liabilities imposed by P.L. ,
46 c. (C.) (pending before the Legislature as this bill) or the

1 declaration:

2 (a) On a declarant which relate to the successor's exercise or
3 non-exercise of special declarant rights; or

4 (b) On his transferor, other than:

5 (i) misrepresentations by any previous declarant;

6 (ii) warranty obligations on improvements made by any previous
7 declarant, or made before the common interest community was
8 created;

9 (iii) breach of any fiduciary obligation by any previous declarant or
10 his appointees to the executive board; or

11 (iv) any liability or obligation imposed on the transferor as a result
12 of the transferor's acts or omissions after the transfer.

13 f. Nothing in this section shall subject any successor to a special
14 declarant right to any claims against, or other obligations of, a
15 transferor declarant, other than claims and obligations arising under
16 P.L. , c. (C.) (pending before the Legislature as this bill) or
17 the declaration.

18 g. (1) Notwithstanding any provision of this section or any other
19 law to the contrary, a lender who makes a loan of money, or who
20 maintains an indicia of ownership primarily to protect a security
21 interest in property subject to P.L. , c. (C.) (pending before the
22 Legislature as this bill) for a loan made by the lender or a predecessor
23 in interest, the proceeds of which are used or may be used by the
24 borrower to finance the design, manufacture, construction, repair,
25 modification, or improvement of real or personal property for sale or
26 lease to others, shall not as a result of its actions as a lender be liable
27 for any loss or damage occasioned by any defect or deficiency in the
28 real or personal property so designed, manufactured, constructed,
29 repaired, modified, or improved or for any loss or damage resulting
30 from the failure of the borrower to use due care in the design,
31 manufacture, construction, repair, modification, or improvement of
32 such real or personal property, unless:

33 (a) the lender or holder has knowingly been a party to
34 misrepresentations with respect to such real or personal property; or

35 (b) the lender or holder of the security interest actively participates
36 in the management of the property.

37 (2) For the purpose of this section, the following shall apply:

38 (a) (i) "Active participation in the management" or "participation in
39 the management" means actual participation in the construction of the
40 property or management or operational affairs of the property by the
41 lender and shall not include the mere capacity, or ability to influence,
42 or the unexercised right to control the property or its management or
43 operations. A holder of security interest shall be considered to be in
44 active participation in the management, only if the lender exercises
45 control at a level comparable to that of a manager of the property,
46 such that the lender has assumed or manifested responsibility, for the

1 overall management of the property encompassing the day-to-day
2 decision making with respect to all, or substantially all, of the
3 operational, as opposed to financial or administrative, aspects of the
4 property. Operational aspects of the property shall include functions
5 such as that of community manager, construction manager, operations
6 manager, chief operating officer or chief executive officer. Financial
7 or administrative aspects shall include functions such as that of credit
8 manager, accounts payable or receivable manager, or both, personnel
9 manager, controller, chief financial officer or similar functions.

10 (ii) Unless a lender is otherwise deemed to be an affiliate under this
11 section, no act or omission prior to the time that indicia of ownership
12 are held primarily to protect a security interest shall constitute
13 evidence of participation in management.

14 (iii) Actions that are consistent with holding ownership indicia
15 primarily to protect a security interest shall not constitute participation
16 in management for purposes of P.L. , c. (C.) (pending before the
17 Legislature as this bill). The authority for the lender to make such
18 actions may, but need not, be contained in contractual or other
19 documents specifying requirements for financial, environmental, or
20 other warranties, covenants, conditions, representations or promises
21 from the borrower. Loan policing and work-out activities shall cover
22 and include all activities up to foreclosure and its equivalents.

23 (b) "Lender" means a person who maintains indicia of ownership
24 primarily to protect a security interest. A lender shall include the initial
25 lender, such as a loan originator, any subsequent holder of the security
26 interest, such as a successor-in-interest or subsequent purchaser, a
27 guarantor of an obligation, surety or any other person who holds
28 ownership indicia primarily to protect a security interest, or a receiver
29 or other person who acts on behalf of for the benefit of a lender.

30 (c) "Indicia of ownership" means evidence of a security interest,
31 evidence of an interest in real or personal property securing a loan or
32 other obligation, including any legal or equitable title to real or
33 personal property acquired incident to foreclosure and its equivalents.
34 Evidence of such interests shall include, but is not limited to,
35 mortgages, security agreements, deeds of trust, liens, surety bonds and
36 guarantees of obligations, title held pursuant to lease financing
37 transaction in which the lessor does not select initially the leased
38 property, hereinafter "lease financing transaction," legal or equitable
39 title obtained pursuant to foreclosure and their equivalents. Evidence
40 of such interests shall also include assignments, pledges or other rights
41 to or other forms of encumbrance against property that are held
42 primarily to protect a security interest. A person is not required to
43 hold title or a security interest in order to maintain indicia of
44 ownership.

45 (d) "Primarily to protect a security interest" means that the holder's
46 indicia of ownership are held primarily for the purpose of securing

1 payment or performance of an obligation, but does not include indicia
2 of ownership held primarily for investment purposes, or ownership
3 indicia held primarily for purposes other than as a protection for a
4 security interest. A holder will be deemed to maintain indicia of
5 ownership primarily to protect a security interest even when the holder
6 has secondary reasons for maintaining indicia of ownership.

7 h. A lender who engages in policing activities prior to foreclosure
8 shall remain within the exemptions provided in subsection g. of this
9 section provided that the lender does not, by such activities,
10 participate in the management of the property, or is not otherwise
11 determined to be an affiliate of the declarant. Such policing activities
12 shall include, but are not limited to, requiring the borrower to comply
13 or come into compliance with applicable federal, State and local laws,
14 rules and regulations during the term of the security interest; securing
15 or exercising authority to monitor or inspect the property during the
16 term of the security interest; or taking other actions to adequately
17 police the loan or security interest, such as requiring a borrower to
18 comply with any of its warranties, covenants, conditions,
19 representations or promises.

20 i. A lender who engages in work-out activities prior to foreclosure
21 and its equivalents shall remain within the exemption provided that the
22 lender does not by such action participate in the management of the
23 property. For the purposes of P.L. , c. (C.) (pending before the
24 Legislature as this bill), "work-out activities" means those actions by
25 which a lender, at any time prior to foreclosure and its equivalents,
26 seeks to: prevent, cure or mitigate a default by the borrower or
27 obligor; or preserve or prevent the diminution of the value of the
28 security. Work-out activities include, but are not limited to:
29 restructuring or renegotiating the terms of the security interest;
30 requiring payment of the additional rent or interest; exercising
31 forbearance; requiring or exercising rights pursuant to an assignment
32 of accounts or other amounts owing to an obligor; requiring or
33 exercising rights pursuant to an escrow agreement pertaining to
34 amounts owing to an obligor; providing specific or general financial or
35 other advice, suggestions, counseling or guidance; and exercising any
36 right or remedy the lender is entitled to by law or under any
37 warranties, covenants, conditions, representations or promises from
38 the borrower.

39
40 53. (New section) Except as provided in section 22 of P.L. , c.
41 (C.) (pending before the Legislature as this bill), any contract or
42 agreement affecting the use, maintenance, management, or access of
43 the common elements entered into between the declarant and itself or
44 a company owned, operated or controlled by the declarant or in which
45 it has a financial interest prior to non-declarant unit owners being
46 entitled to elect a majority of the executive board, shall not be entered

1 into for a period in excess of one year. The contracts or agreements
2 shall not be renewed for periods in excess of one year and the
3 association may, at the end of any one-year period, terminate any
4 further renewals or extensions thereof.

5 This section shall not apply to:

6 Any lease the termination of which would terminate the common
7 interest community or reduce its size, unless the real estate subject to
8 that lease was included in the common interest community for the
9 purpose of avoiding the right of the association to terminate a lease
10 under this section, or a proprietary lease.

11
12 54. (New section) a. The bylaws of an association, which shall
13 initially be recorded with the declaration, shall provide:

14 (1) the number of members of the executive board and the titles of
15 the officers of the association;

16 (2) election by the executive board of a president, treasurer,
17 secretary, and any other officers of the association the bylaws may
18 specify;

19 (3) the qualifications, powers and duties, terms of office, and
20 manner of electing and removing executive board members and
21 officers and filling vacancies;

22 (4) which, if any, of its powers the executive board or officers may
23 delegate to other persons or to a managing agent;

24 (5) which of its officers may prepare, execute, certify, and record
25 amendments to the declaration on behalf of the association;

26 (6) a method for amending the bylaws;

27 (7) for alternative dispute resolution in accordance with the terms
28 of section 86 of of P.L. , c. (C.) (pending before the
29 Legislature as this bill); and

30 (8) a method for the adoption, amendment and enforcement of
31 reasonable administrative rules and regulations relating to the
32 operation, use, maintenance, and enjoyment of the units and of the
33 common elements, including limited common elements.

34 b. Subject to the provisions of the declaration, the bylaws may
35 provide for any other matters the association deems necessary and
36 appropriate. No amendment to a bylaw shall be effective until recorded
37 in the same office as existing bylaws.

38
39 55. (New section) a. Except to the extent provided by the
40 declaration, subsection b. of this section, or subsection h. of section 61
41 of P.L. , c. (C.) (pending before the Legislature as this bill),
42 an association shall be responsible for the maintenance, repair,
43 cleaning, and replacement of the common elements, and each unit
44 owner shall be responsible for maintenance, repair and replacement of
45 the owner's unit. Subject to the terms of paragraph 4 of subsection a.
46 of section 49 of P.L. , c. (C.) (pending before the Legislature

1 as this bill), each unit owner shall afford to the association and the
2 other unit owners, and to their agents or employees, such access
3 through the owner's unit as reasonably necessary for those purposes.
4 If damage is inflicted on the common elements or on any unit through
5 which access is taken, the entity responsible for the damage shall be
6 liable for the prompt repair thereof.

7 b. In addition to the liability that a declarant as a unit owner has
8 under P.L. , c. (C.)(pending before the Legislature as this bill), the
9 declarant alone shall be liable for all expenses in connection with real
10 estate subject to development rights. A unit owner or owner of
11 another portion of the common interest community shall not be subject
12 to a claim for payment of development rights expenses. Unless the
13 declaration provides otherwise, any income or proceeds from real
14 estate subject to development rights shall inure to the declarant.

15 c. In a planned community, if all development rights have expired
16 with respect to any real estate, the declarant shall remain liable for all
17 expenses of that real estate unless, upon expiration, the declaration
18 provides that the real estate shall become common elements or units.
19

20 56. (New section) a. A meeting of the unit owners' association
21 shall be held at least annually. Special meetings of an association may
22 be called by the president, a majority of the executive board, or by unit
23 owners having 20 percent, or any lower percentage specified in the
24 bylaws, of the votes in the association. Not less than 10 or more than
25 60 days in advance of any unit owners' association meeting, the
26 secretary or other officer specified in the bylaws shall cause notice to
27 be hand-delivered or placed in the United States mail in a prepaid
28 envelope to the proper mailing address of each unit or to any other
29 mailing address designated in writing by the unit owner. The notice of
30 any meeting shall state the time and place of the meeting and the items
31 on the agenda, including the general nature of any proposed
32 amendment to the declaration or bylaws, any budget changes, and any
33 proposal to remove an officer or member of the executive board.

34 b. Meetings of the executive board of an association shall be held
35 at least once every three months throughout the calendar or fiscal year,
36 and as often as necessary in order to conduct the business of the
37 association. Except as otherwise provided in this section, all meetings
38 of the membership or the executive board of any association shall be
39 open to all members of the association. The executive board shall
40 establish an agenda for each meeting. Copies of the agenda, to the
41 extent known, shall be available at least 48 hours before the meeting
42 for distribution to unit owners, and all unit owners who attend the
43 meeting shall be given a reasonable opportunity to comment on
44 matters under consideration by the executive board or otherwise of
45 concern to unit owners. A board shall not be obligated to allow the
46 period that is substantially devoted to the making of comments by unit

1 owners to exceed, in the aggregate, 45 minutes in any one meeting;
2 provided, however, that all persons having an interest in a proposed
3 budget, a proposed amendment to the rules or bylaws, or any
4 proposal to sell or lease any of the common elements shall be given an
5 opportunity to make comments, subject to the right of the chair to
6 limit or exclude comment or testimony that is repetitive or irrelevant.
7 Working sessions of an executive board at which no votes shall be
8 taken shall be permitted and such meetings shall be open to attendance
9 by unit owners. An executive board shall not be required to allow
10 comments from unit owners at working sessions, but shall be required
11 to arrange for a meeting place large enough to accommodate the
12 anticipated number of unit owners wishing to observe a working
13 session, whenever practicable.

14 Audio recordings for personal use by unit owners in attendance
15 shall be permitted at meetings open to the unit owners; provided,
16 however, that, in the event that it is not the practice of the association
17 to record all meetings, a unit owner wishing to record a meeting shall
18 give at least one business day's prior notice to the executive board of
19 his or her intention to record the meeting. If such notice has not been
20 given and the executive board has not made provision for the
21 recording of the meeting, the executive board may prohibit the unit
22 owner from recording the meeting.

23 c. (1) Notwithstanding the provisions of subsection b. of this
24 section, the executive board may exclude or restrict attendance at
25 those meetings, or portions of meetings, dealing with (a) any matter
26 the disclosure of which would constitute an unwarranted invasion of
27 individual privacy; (b) any pending or anticipated litigation or contract
28 negotiations; (c) any matters falling within the attorney-client
29 privilege, to the extent that confidentiality is required in order for the
30 attorney to exercise his ethical duties as a lawyer; or (d) any matter
31 involving the employment, promotion, discipline, or dismissal of a
32 specific officer or employee of the association.

33 (2) The executive board shall not exclude or restrict attendance at
34 any meeting or portion thereof to discuss any matter described in
35 paragraph (1) of this subsection until it shall first adopt, at a meeting
36 to which all unit owners are permitted to attend, a motion stating: (a)
37 the general nature of the subject to be discussed; and (b) as precisely
38 as possible, a time when and the circumstances under which the
39 discussions conducted in closed session of the executive board may be
40 disclosed to the unit owners.

41 (3) Minutes shall be taken in any closed session, in the same manner
42 as provided for in subsection b. of this section, but need not be made
43 available until the subject matter of the meeting may be disclosed to
44 the unit owners.

45 (4) A formal or binding vote shall not be taken at any closed session
46 unless that meeting falls under the exceptions enumerated in paragraph

1 (1) of this subsection. If a vote is taken in a closed session, the fact
2 that a vote was taken (without disclosure of confidential information)
3 shall be confirmed in a public session which is open to all unit owners.

4 d. Copies of the agenda for an executive board meeting shall be
5 made available to the unit owners at the beginning of each open
6 meeting of the executive board.

7 e. All meetings of the unit owners and executive board meetings
8 shall be held at the community property, or, if there is no suitable
9 meeting facility at the community, at a suitable meeting facility
10 elsewhere in the municipality or, if there is no such suitable facility, in
11 an adjoining municipality, or within 10 miles of the community.

12 f. Adequate notice shall be given to all unit owners of the time and
13 place of all meetings required to be open to all unit owners. In order
14 to constitute "adequate notice," such notice shall be in writing and
15 shall be given at least 48 hours in advance, giving the time, date,
16 location, and agenda of the meeting. Such notice shall be:

17 (1) prominently posted in at least one location within the common
18 interest community where it is accessible at all times to all unit owners;

19 (2) published in the community newsletter, if any, provided the
20 publication schedule of the newsletter permits the notice to be
21 published in adequate time for the meeting; and

22 (3) filed with the person responsible for administering the business
23 office of the association. If the business office of the association is in
24 the common interest community, the notice shall be posted
25 prominently in that office.

26 In addition to these requirements, notices concerning meetings at
27 which the budget or a rule or bylaw change will be discussed shall be
28 mailed or hand delivered to each unit owner at least 48 hours in
29 advance of the meeting. A unit owner may authorize the association
30 to forward notices by electronic mail in lieu of receiving notices by
31 regular mail.

32 At least once each year, within seven days following the annual
33 meeting of the association, the executive board shall post, and
34 maintain posted throughout the year at the prominent place accessible
35 to all unit owners at which notices are posted, publish in the
36 community newsletter, if any, and file with the person responsible for
37 administering the business office of the association, a schedule of the
38 times, dates and locations of all regular meetings of the executive
39 board that are to be held during the succeeding year. Notice of any
40 revision of the schedule shall be given in the same manner as the
41 original notice of the schedule.

42 g. Minutes shall be taken at all meetings. Such minutes shall
43 completely and accurately reflect all actions taken at the meeting.
44 Approved copies of minutes shall be made available to unit owners
45 within five business days after the date of approval of the minutes
46 upon a request for a copy thereof. A permanent record of all approved

1 minutes shall be maintained by the association at its business office,
2 where they shall be available for review by all unit owners, except that
3 minutes of a closed session may be withheld from such review for a
4 reasonable period of time when necessitated by the reason for which
5 the meeting was closed, or may be provided in redacted form by
6 removing confidential information as necessary.

7 h. Within 30 days following an open meeting, the executive board
8 shall provide all unit owners with a notice describing any adoption or
9 amendment of a rule or bylaw that was approved at the meeting. No
10 new rule or bylaw, or amendment to an existing rule or bylaw, shall
11 take effect until such notice has been given to all unit owners. This
12 notice shall be provided in the same manner as the "adequate notice"
13 of a meeting required pursuant to subsection f. above. Additionally,
14 all unit owners shall have the right to inspect all documents voted
15 upon at a meeting, including amendments to the rules and bylaws, the
16 annual budget, sale and lease of common elements, and contracts
17 entered into by the association prior to any such action taking effect.
18 These provisions shall not be construed to require that minutes,
19 whether approved or unapproved, be made available prior to any
20 action taking effect.

21

22 57. (New section) a. Unless the bylaws provide otherwise, a
23 quorum shall be deemed to be present throughout any meeting of the
24 association if persons entitled to cast 20 percent of the votes that may
25 be cast for election of the executive board are present in person or by
26 proxy at the beginning of the meeting.

27 b. Unless the bylaws specify a larger percentage, a quorum shall be
28 deemed to be present throughout any meeting of the executive board
29 if persons entitled to cast 50 percent of the votes on that board are
30 present at the beginning of the meeting.

31

32 58. (New section) a. If only one of several owners of a unit is
33 present at a meeting of the association, that owner shall be entitled to
34 cast all the votes allocated to that unit. If more than one of the owners
35 are present, the votes allocated to that unit shall be cast only in
36 accordance with the agreement of a majority in interest of the owners,
37 unless the declaration expressly provides otherwise. It shall be
38 considered majority agreement if any one of the owners casts the votes
39 allocated to that unit without protest being made promptly to the
40 person presiding over the meeting by any of the other owners of the
41 unit.

42 b. Votes allocated to a unit may be cast pursuant to a proxy duly
43 executed by a unit owner. A proxy vote in connection with the election
44 of members to the executive board shall be subject to section 69 of
45 P.L. , c. (C.) (pending before the Legislature as this bill).
46 Unless the declaration or bylaws provide otherwise, in connection with

1 any other matter to be voted upon by the unit owners, a proxy may be
2 a general proxy permitting the proxy agent to cast the vote in the
3 proxy agent's discretion. If a proxy is permitted to be a general proxy
4 pursuant to the terms of this subsection b., and is given to an officer
5 of the association who is identified in the proxy by corporate title, the
6 proxy agent shall cast the vote given by the proxy as determined by a
7 majority vote of the executive board. If a unit is owned by more than
8 one person, each owner of the unit may vote, unless the additional
9 vote would violate the terms of the declaration, or register protest to
10 the casting of votes by the other owners of the unit through a duly
11 executed proxy. A proxy shall be void if it is not dated.

12 c. An association shall provide that those unit owners wishing to
13 cast anonymous ballots shall be provided a method to do so, provided
14 that the association may utilize reasonable methods to verify that
15 ballots are being cast only by unit owners having the right to do so in
16 accordance with P.L. , c. (C.) (pending before the Legislature
17 as this bill), the declaration and the bylaws. If a unit is owned by more
18 than one person, each owner of the unit may vote through a duly
19 executed anonymous ballot, unless the additional ballot would violate
20 the terms of the declaration and provided that the association adopts
21 procedures to ensure that the total number of ballots cast for each unit
22 does not exceed the permitted number of ballots under the declaration.
23 A unit owner may revoke a ballot executed pursuant to this section
24 only by actual notice of revocation to the person presiding over a
25 meeting of the association and provided the ballot may be identified as
26 that of the unit owner seeking to revoke it.

27 d. If the declaration requires that votes on specified matters
28 affecting the common interest community be cast by lessees rather than
29 unit owners of leased units:

30 (1) the provisions of subsections a. and b. of this section shall apply
31 to lessees as if they were unit owners;

32 (2) unit owners who have leased their units to other persons shall
33 not cast votes on those specified matters; and

34 (3) lessees shall be entitled to notice of meetings, access to records,
35 and other rights respecting those matters as if they were unit owners.
36 Unit owners shall also be given notice, in the manner provided in
37 section 56 of P.L. , c. (C.) (pending before the Legislature as
38 this bill), of all meetings at which lessees are entitled to vote.

39 e. No votes allocated to a unit owned by the association shall be
40 cast.

41 f. Any vote permitted under P.L. , c. (C.) (pending before
42 the Legislature as this bill) may, at the election of the executive board,
43 be made electronically provided that (1) the association is able to
44 verify that the vote is cast by a unit owner having the right to do so,
45 and (2) the ballot may be cast anonymously or, when that is not
46 reasonably practicable, the identity of the unit owner and selection

1 indicated on any ballot shall be known only to a person or persons
2 appointed to count the ballots, which person or persons shall not be a
3 member of the executive board and who shall subscribe to an oath not
4 to divulge the identity of, or selection indicated by, any unit owner. If
5 the anonymity of an electronic ballot cannot be guaranteed, electronic
6 voting shall be permitted provided that a unit owner is given the
7 option of casting an anonymous written ballot. A unit owner voting by
8 electronic means shall be deemed to be present at a meeting provided
9 that the unit owner elects a proxy pursuant to subsection b. of this
10 section. In such event, the proxy may provide that the unit owner's
11 vote will be as directed in the unit owner's electronic ballot.

12 g. The declarant shall not be permitted to cast any votes allocated
13 to unsold lots, parcels, units, or interests, in order to amend the
14 declaration, bylaws or any other document, for the purpose of
15 changing the permitted use of a lot, parcel, unit, or interest, or for the
16 purpose of reducing the common elements or facilities.

17

18 59. (New section) a. A unit owner, except as an officer of the
19 association, shall have no authority to act for or bind the association.
20 An association, however, may assert tort claims concerning the
21 common elements and facilities of the development as if the claims
22 were asserted directly by the unit owners individually.

23 b. A unit owner shall not be liable for an injury or damage arising
24 out of the condition or use of the common elements, other than as
25 provided elsewhere in P.L. , c. (C.) (pending before the
26 Legislature as this bill) concerning a unit owners' intentional or
27 negligent acts. The association or a unit owner other than the declarant
28 shall not be liable for that declarant's torts in connection with any part
29 of the common interest community which that declarant has the
30 responsibility to maintain.

31 c. An action alleging a wrongful act by an association, including an
32 action arising out of the condition or use of the common elements,
33 may be maintained against the association but shall not be maintained
34 against any unit owner. If the wrongful act occurred during any period
35 of declarant control and the association has given the declarant
36 reasonable notice of and an opportunity to defend against the action,
37 the declarant who then controlled the association shall be liable to the
38 association or to any unit owner for: (1) all losses not covered by
39 insurance suffered by the association or that unit owner arising from
40 that wrongful act, and (2) all costs that the association would not have
41 incurred but for the wrongful act, including any breach of contract
42 remedies. Whenever a declarant is liable to the association under this
43 section, the declarant also shall be liable for all expenses of litigation,
44 including reasonable attorney's fees , incurred by the association.

45 d. Any statute of limitations affecting an association's right of
46 action against a declarant under P.L. , c. (C.) (pending before

1 the Legislature as this bill) shall be tolled until the period of declarant
2 control terminates. A unit owner shall not be precluded from
3 maintaining an action contemplated by this section because he is a unit
4 owner or a member or officer of the association. Liens resulting from
5 judgments against the association shall be governed by section 64 of
6 P.L. , c. (C.) (pending before the Legislature as this bill).

7 e. When the bylaws provide, an association shall not be liable in
8 any civil action brought by or on behalf of a unit owner to respond in
9 damages as a result of bodily injury to the unit owner occurring on the
10 common elements of the association. An association shall not be liable
11 for the exercise of discretion, when, in the face of competing demands,
12 it determines whether and how to utilize and apply existing resources,
13 including those allocated for equipment, facilities and personnel, unless
14 a court concludes that the determination of the association was
15 palpably unreasonable. This subsection shall not grant immunity to any
16 association causing bodily injury to a unit owner on the association's
17 common elements by its willful, wanton or grossly negligent act of
18 commission or omission.

19

20 60. (New section) a. In a condominium or planned community,
21 portions of the common elements may be conveyed or subjected to a
22 security interest by the association if persons entitled to cast at least
23 80 percent of the votes in the association, including 80 percent of the
24 votes allocated to units not owned by a declarant, or any larger
25 percentage the declaration specifies, agree to that action; but all
26 owners of units to which any limited common element is allocated shall
27 agree in order to convey that limited common element or subject it to
28 a security interest. The declaration may specify a smaller percentage
29 only if all of the units are restricted exclusively to non-residential uses.
30 Proceeds of the sale shall be an asset of the association, but the
31 proceeds of a sale of limited common elements shall be distributed
32 equitably among the owners of units to which the limited common
33 elements were allocated.

34 b. Part of a cooperative may be conveyed and all or part of a
35 cooperative may be subjected to a security interest by the association
36 if persons entitled to cast at least 80 percent of the votes in the
37 association, including 80 percent of the votes allocated to units not
38 owned by a declarant, or any larger percentage the declaration
39 specifies, agree to that action; but, if fewer than all of the units or
40 limited common elements are to be conveyed or subjected to a security
41 interest, then all unit owners of those units, or the units to which those
42 limited common elements are allocated, shall agree in order to convey
43 those units or limited common elements or subject them to a security
44 interest. The declaration may specify a smaller percentage only if all
45 of the units are restricted exclusively to nonresidential uses. Proceeds
46 of the sale shall be an asset of the association. Any purported

1 conveyance or other voluntary transfer of an entire cooperative, unless
2 made pursuant to section 42 of P.L. , c. (C.) (pending before
3 the Legislature as this bill), shall be void.

4 c. An agreement to convey common elements in a condominium or
5 planned community, or to subject them to a security interest, or in a
6 cooperative, an agreement to convey any part of a cooperative or
7 subject it to a security interest, shall be evidenced by the execution of
8 an agreement, or ratifications thereof, in the same manner as a deed,
9 by the requisite number of unit owners. The agreement shall specify a
10 date after which the agreement will be void unless recorded. The
11 agreement and all ratifications thereof shall be recorded in each county
12 in which a portion of the common interest community is situated, and
13 shall be effective only upon recordation.

14 d. An association, on behalf of the unit owners, may contract to
15 convey an interest in a common interest community pursuant to
16 subsection a. of this section, but the contract shall not be enforceable
17 against the association until approved pursuant to subsections a., b.,
18 and c. of this section. Thereafter, the association shall have all of the
19 powers necessary and appropriate to effect the conveyance or
20 encumbrance, including the power to execute deeds or other
21 instruments.

22 e. Unless made pursuant to this section, any purported conveyance,
23 encumbrance, judicial sale, or other voluntary transfer of common
24 elements or of any other part of a cooperative shall be void.

25 f. A conveyance or encumbrance of common elements or of a
26 cooperative pursuant to this section shall not deprive any unit of its
27 rights of access and support.

28 g. Unless the declaration otherwise provides, if the holders of a first
29 security interest on 80 percent of the units which are subject to
30 security interests on the day the unit owners' agreement under
31 subsection c. is recorded, consent in writing:

32 (1) a conveyance of common elements pursuant to this section shall
33 terminate both the undivided interests in those common elements
34 allocated to the units and the security interests in those undivided
35 interests held by all persons holding security interests in the units; and

36 (2) an encumbrance of common elements pursuant to this section
37 shall have priority over all preexisting encumbrances on the undivided
38 interest in those common elements held by all persons holding security
39 interests in the units.

40 h. The consent by holders of first security interests on units
41 described in subsection g. of this section, or a certificate of the
42 secretary affirming that those consents have been received by the
43 association, may be recorded at any time before the date on which the
44 agreement under subsection c. becomes void. Consents or certificates
45 so recorded shall be valid from the date they are recorded for purposes
46 of calculating the percentage of consenting first security interest

1 holders, regardless of late sales or encumbrances on those units.
2 Regardless of the consent of the required percentage of first security
3 interest holders, a conveyance or encumbrance of common elements
4 shall not affect interests having priority over the declaration, or
5 created by the association after the declaration was recorded.

6 i. In a cooperative, the association may acquire, hold, encumber, or
7 convey a proprietary lease without complying with this section.

8 j. The effects of foreclosure of security interests granted pursuant
9 to this section shall be governed by section 42 of P.L. , c. (C.)
10 (pending before the Legislature as this bill).

11

12 61. (New section) a. Commencing not later than the date of the
13 first conveyance of a unit to a person other than a declarant, the
14 association shall maintain, to the extent reasonably available:

15 (1) property insurance on the common elements and, in a planned
16 community, also on property that must become common elements and
17 all structural portions of the common interest community, insuring
18 against all risks of direct physical loss commonly insured against or,
19 in the case of a conversion building, against fire and extended
20 coverage perils. Unless the association's declaration provides
21 otherwise, the coverages under the property insurance shall be based
22 upon replacement cost. If the declaration or bylaws do not provide for
23 replacement cost insurance, the total amount of insurance after
24 application of any deductibles shall not be less than 80 percent of the
25 actual cash value of the insured property at the time the insurance is
26 purchased and at each renewal date, exclusive of land, excavations,
27 foundations, and other items normally excluded from property policies;

28 (2) liability insurance, including medical payments insurance, in an
29 amount determined by the executive board but not less than any
30 amount specified in the declaration, covering all occurrences
31 commonly insured against for death, bodily injury and property
32 damage arising out of or in connection with the use, ownership or
33 maintenance of the common elements and, in cooperatives, also of all
34 units; and

35 (3) any other insurance required by the declaration, association's
36 bylaws or applicable law.

37 b. In the case of a building that is part of a cooperative or that
38 contains units having horizontal boundaries described in the
39 declaration, the insurance maintained under paragraph (1) of
40 subsection a., to the extent reasonably available, shall include coverage
41 of the units, but need not include improvements and betterments
42 installed by unit owners.

43 c. If the insurance described in subsections a. and b. of this section
44 is not reasonably available, the association promptly shall cause notice
45 of that fact to be hand-delivered or placed in the United States mail in
46 a prepaid envelope to all unit owners. The declaration may require the

1 association to carry any other insurance, and the association in any
2 event may carry any other insurance it considers appropriate to protect
3 the association or the unit owners.

4 d. Insurance policies carried pursuant to subsections a. and b. of
5 this section shall provide that:

6 (1) each unit owner is an insured person under the policy with
7 respect to liability arising out of the owner's interest in the common
8 elements or membership in the association;

9 (2) the insurer waives its right to subrogation under the policy
10 against any unit owner or member of the owner's household;

11 (3) no act or omission by any unit owner, unless acting within the
12 scope of his authority on behalf of the association, will void the policy
13 or be a condition to recovery under the policy;

14 (4) there is other insurance in the name of a unit owner covering the
15 same risk covered by the policy; and,

16 (5) the association's policy provides primary insurance.

17 e. Any loss covered by the property policy under paragraph (1) of
18 subsection a. and under subsection b. of this section shall be adjusted
19 with the association, but the insurance proceeds for that loss shall be
20 payable, if in excess of \$50,000, to any insurance trustee designated
21 for that purpose, or otherwise to the association, and not to any holder
22 of a security interest. The insurance trustee or the association shall
23 hold any insurance proceeds in trust for the association, unit owners,
24 and holders of a security interest or any lien holders as their interests
25 may appear. Subject to the provisions of subsection h. of this section,
26 the proceeds shall be disbursed first for the repair or restoration of the
27 damaged property, and the association, unit owners, and holders of a
28 security interest or any lien holders shall not be entitled to receive
29 payment of any portion of the proceeds unless there is a surplus of
30 proceeds after the property has been completely repaired or restored,
31 or the common interest community is terminated.

32 f. An insurance policy issued to the association shall not prevent a
33 unit owner from obtaining insurance for his own benefit.

34 g. An insurer that has issued an insurance policy under this section
35 shall issue certificates or memoranda of insurance to the association
36 and, upon written request, to any unit owner or holder of a security
37 interest. The insurer issuing the policy shall not cancel or refuse to
38 renew the policy until 30 days after notice of the proposed cancellation
39 or non-renewal has been mailed to the association, and to each unit
40 owner and each holder of a security interest to whom a certificate or
41 memorandum of insurance has been issued, at their respective last
42 known addresses.

43 h. (1) Any portion of the common interest community for which
44 insurance is required under this section which is damaged or destroyed
45 shall be repaired or replaced promptly by the association unless,

46 (a) the common interest community is terminated, in which case the

1 provisions of section 42 of P.L. , c. (C.) (pending before the
2 Legislature as this bill) apply,

3 (b) repair or replacement would be illegal under any State statute
4 or local ordinance governing health or safety, or

5 (c) 80 percent of the unit owners, including any owner of a unit or
6 assigned limited common element that will not be rebuilt, vote not to
7 rebuild. The cost of repair or replacement in excess of insurance
8 proceeds and reserves shall be a common expense.

9 (2) If the entire common interest community is not repaired or
10 replaced,

11 (a) the insurance proceeds attributable to the damaged common
12 elements shall be used to restore the damaged area to a condition
13 compatible with the remainder of the common interest community, and

14 (b) except to the extent that other proceeds will be distributed
15 under subparagraph (b) of paragraph (11) of subsection a. of section
16 28 of P.L. , c. (C.) (pending before the Legislature as this
17 bill), (i) the insurance proceeds attributable to units and limited
18 common elements that are not rebuilt shall be distributed first to the
19 holders of a security interest as their interests may appear, unless the
20 mortgage instrument provides otherwise, and to unit owners whose
21 units are not encumbered by security interests, and then, if any surplus
22 remains, first to owners of those units and the owners of the units to
23 which those limited common elements were allocated as their interests
24 may appear, and (ii) the remainder of the proceeds shall be distributed
25 to all other unit owners or lien holders, as their interests may appear,
26 as follows: in a condominium, in proportion to the common element
27 interests of all the units and, in a cooperative or planned community,
28 in proportion to the common expense liabilities of all the units. If the
29 unit owners vote not to rebuild any unit, that unit's allocated interests
30 shall be automatically reallocated upon the vote as if the unit had been
31 condemned under subsection a. of section 7 of P.L. , c. (C.)
32 (pending before the Legislature as this bill), and the association
33 promptly shall prepare, execute and record an amendment to the
34 declaration reflecting the reallocations.

35 i. The provisions of this section may be varied or waived in the case
36 of a common interest community in which all units are restricted to
37 non-residential use.

38

39 62. (New section) Unless otherwise provided in the declaration,
40 any surplus funds of an association remaining from common receipts
41 after payment of or provision for common expenses and any
42 prepayment of reserves shall be paid to the unit owners in proportion
43 to their common expense liabilities or credited to them to reduce their
44 future common expense assessments.

45

46 63. (New section) a. Until an association makes a common

1 expense assessment, the declarant shall pay all common expenses.
2 After an assessment has been made by an association, assessments
3 shall be made at least annually, based on a budget which shall be
4 adopted at least annually by the association.

5 b. Except for assessments under subsections c., d. and e. of this
6 section, all common expenses shall be assessed against all the units in
7 accordance with the allocations set forth in the declaration pursuant to
8 subsections a. and b. of section 30 of P.L. , c. (C.) (pending
9 before the Legislature as this bill). Any past due common expense
10 assessment or installment thereof shall bear interest at a rate to be
11 established by the association not exceeding 18 percent per year.

12 c. Unless the declaration provides otherwise:

13 (1) Any common expense associated with the maintenance, repair
14 or replacement of a limited common element shall be assessed against
15 the units to which that limited common element is assigned, equally,
16 or in any other proportion the declaration provides;

17 (2) Any common expense or portion thereof benefiting fewer than
18 all of the units shall be assessed exclusively against the units benefited;
19 provided, however, that expenses to repair, maintain or replace general
20 common elements shall, in the absence of unit owner misconduct, be
21 deemed to benefit all units; and

22 (3) The costs of insurance shall be assessed in proportion to risk
23 and, if separately metered, the costs of utilities shall be assessed in
24 proportion to usage.

25 d. Assessments to pay a judgment against the association pursuant
26 to subsection a. of section 65 of P.L. , c. (C.) (pending before
27 the Legislature as this bill) may be made only against the units in the
28 common interest community at the time the judgment was entered, in
29 proportion to their common expense liabilities.

30 e. If any common expense is caused by the misconduct of any unit
31 owner, the association may assess that expense exclusively against that
32 owner's unit, provided that alternate dispute resolution as required
33 pursuant to section 87 P.L. , c. (C.) (pending before the
34 Legislature as this bill) is provided prior to assessment.

35 f. If common expense liabilities are reallocated, common expense
36 assessments and any installment thereof not yet due shall be
37 recalculated in accordance with the reallocated common expense
38 liabilities.

39

40 64. (New section) a. If a unit owner shall fail to pay any
41 assessment or other monies duly owed the association, the association
42 shall have a lien on the unit for the amount of any such unpaid
43 assessment or other moneys. Upon proper notice to the unit owner
44 indicating the amount and basis of the lien, the association may,
45 simultaneously or thereafter, record a notice of the lien in the amount
46 of the delinquent assessment or other monies duly owed the

1 association together with interest thereon and, if authorized by the
2 declaration or bylaws, late fees, those fines authorized pursuant to
3 section 50 of P.L. , c. (C.) (pending before the Legislature as
4 this bill) or pursuant to a determination by a court of competent
5 jurisdiction and, subject to the provisions of paragraph 11 of
6 subsection a. of section 49 of P.L. , c. (C.) (pending before
7 the Legislature as this bill), reasonable attorney's fees ; provided,
8 however, that an association shall not record a lien in which the unpaid
9 assessment consists solely of late fees. A lien for an assessment shall
10 be effective when due. Any other lien shall be effective from and after
11 the time of recording, in the public records of the county in which the
12 unit is located, of a claim of lien stating the description of the unit, the
13 name of the record owner, the amount due, and the date when due.
14 Such claim of lien shall include only sums that are due and payable
15 when the claim of lien is recorded and shall be signed and verified by
16 an officer or agent of the association. Upon full payment of all sums
17 secured by the lien, the party making payment shall be entitled to have
18 the lien canceled or discharged of record by the association, upon
19 payment of the recording fee and a discharge preparation fee to the
20 association in an amount not exceeding \$50, and to receive the
21 canceled document or discharge. Except as set forth in subsection b.
22 of this section, all such liens shall be subordinate to any lien for past
23 due and unpaid property taxes, the lien of any first mortgage to which
24 the unit is subject and to any other lien recorded prior to the time of
25 recording of the claim of lien.

26 b. A lien recorded under subsection a. of this section, to the extent
27 it is the result of a customary association assessment that became due
28 for the six-month period prior to the recording of the lien and in the
29 absence of any provision permitting the acceleration of common
30 expense fees, shall have a priority over prior recorded mortgages and
31 other liens, except for liens for unpaid property taxes or federal taxes,
32 in accordance with this subsection.

33 (1) Such a lien shall be subordinate to any liens or encumbrances
34 recorded before the declaration and, in a cooperative, shall be
35 subordinate to any liens and encumbrances that the association creates,
36 assumes or takes title to the cooperative property subject to.

37 (2) Such a lien shall be subordinate to a first mortgage recorded
38 against a condominium unit prior to April 1, 1996, or a first mortgage
39 against any other type of common interest unit, other than a
40 cooperative, recorded prior to the effective date of P.L. , c.
41 (C.) (pending before the Legislature as this bill).

42 (3) With respect to a particular mortgage, in order to have the
43 priority set forth in this subsection, the lien of the association shall
44 have been recorded prior to:

45 (a) the filing with the proper county recording office of a lis
46 pendens giving notice of an action to foreclose a mortgage on that

1 unit; or

2 (b) receipt by the association of a summons and complaint in an
3 action to foreclose a mortgage on that unit, if no lis pendens has been
4 filed.

5 (4) Whenever more than one association lien has been filed, either
6 because an association files more than one lien or more than one
7 association having the right to do so files liens, the total lien priority
8 for each association shall not be greater than the six-month priority
9 described in this subsection. Priority between associations, whenever
10 more than one association files a lien, shall be determined by the date
11 of recording of the lien, with the earlier recorded lien having priority
12 over later recorded liens.

13 (5) The priority granted to a lien under this section shall expire on
14 the first day of the 60th month next following the date of recording of
15 an association's lien, provided that subsequent lien filings shall have
16 the priority otherwise set forth in this section upon the expiration of
17 any prior lien filing, subject to the expiration period set forth in this
18 subsection.

19 (6) When recording a lien that may be granted priority pursuant to
20 this subsection, an association shall notify, in writing, any holder of a
21 first mortgage lien on the property of the filing of the association lien.
22 An association that exercises a good faith effort, but which is unable
23 to ascertain the identity of a holder of a prior recorded mortgage on
24 a unit, shall be deemed in substantial compliance with this paragraph.
25 The notice required herein shall be deemed to have been properly
26 made if mailed, by certified mail, with proper postage prepaid, to the
27 address set forth on the recorded mortgage or, when the mortgage has
28 been assigned, to the address indicated on the assignment of mortgage,
29 unless the first mortgage holder or assignee has, in writing, specified
30 a different address to the association, whereupon notice shall be
31 deemed adequately made if mailed, postage prepaid, to such address.

32 (7) Nothing in this section shall prevent the establishment of a more
33 favorable association assessment lien priority with respect to any
34 lienholder other than a first mortgage granted by a bank, savings and
35 loan association or similar institutional lender.

36 c. If a mortgagee of a first mortgage of record or other purchaser
37 of a unit obtains title to such unit as a result of foreclosure of the first
38 mortgage, such acquirer of title, his successors and assigns shall not
39 be liable for the share of common expenses or other assessments by
40 the association pertaining to such unit or chargeable to the former unit
41 owner which became due prior to acquisition of title as a result of the
42 foreclosure. Any remaining unpaid share of common expenses and
43 other assessments, except assessments derived from late fees or fines,
44 shall be deemed to be common expenses collectible from all of the
45 remaining unit owners including such acquirer, his successors and
46 assigns.

1 d. Liens for unpaid assessments may be foreclosed by suit brought
2 in the name of the association in the same manner as a foreclosure of
3 a mortgage on real property. The association shall have the power,
4 unless prohibited by the declaration or bylaws, to bid on the unit at
5 foreclosure sale, and to acquire, hold, lease, mortgage, and convey the
6 same. Suit to recover a money judgment for unpaid assessments may
7 be maintained without waiving the lien securing the same. Nothing
8 herein shall alter the status or priority of municipal liens under
9 R.S.54:5-1 et seq.

10 e. The provisions of this section shall have no effect on the priority
11 or enforcement of association liens that were recorded prior to the
12 effective date of P.L. , c. (C.) (pending before the Legislature
13 as this bill).

14 f. The recording office of any county shall not accept for filing any
15 Notice of Fine concerning fines imposed by an association, unless the
16 lien filing is accompanied by a certification on behalf of the
17 association, by either its attorney or an officer designated by the
18 executive board, that the lien filing is in conformity with section 50 of
19 P.L. , c. (C.) (pending before the Legislature as this bill) or has
20 been authorized pursuant to a determination of a court of competent
21 jurisdiction. A lien certified by an association, through its attorney or
22 designated officer, to be based on unpaid fees for common expenses,
23 late fees, costs of collection, or interest on such fees or costs shall not
24 be required to be accompanied by such proof.

25

26 65. (New section) a. In a condominium or planned community:

27 (1) Except as provided in paragraph (2) of this subsection, a
28 judgment for money against the association if docketed shall not be a
29 lien on the common elements, but shall be a lien in favor of the
30 judgment lien holder against all of the units in the common interest
31 community at the time the judgment was entered. No other property
32 of a unit owner shall be subject to the claims of creditors of the
33 association.

34 (2) If the association has granted a security interest in the common
35 elements to a creditor of the association pursuant to section 60 of
36 P.L. , c. (C.) (pending before the Legislature as this bill), the
37 holder of that security interest shall exercise its right against the
38 common elements before its judgment lien on any unit may be
39 enforced.

40 (3) Whether perfected before or after the creation of the common
41 interest community, if a lien, other than a deed of trust or mortgage,
42 but including a judgment lien or lien attributable to work performed or
43 materials supplied before creation of the common interest community,
44 becomes effective against two or more units, the unit owner of an
45 affected unit may pay to the lien holder the amount of the lien
46 attributable to the owner's unit, and the lien holder, upon receipt of

1 payment, promptly shall deliver a release of the lien covering that unit.
2 The amount of the payment must be proportionate to the ratio which
3 that unit owner's common expense liability bears to the common
4 expense liabilities of all unit owners whose units are subject to the lien.
5 After payment, the association may not assess or have a lien against
6 that unit owner's unit for any portion of the common expenses incurred
7 in connection with the released lien.

8 (4) A judgment against an association shall be indexed in the name
9 of the common interest community and the association and, when so
10 indexed, is notice of the lien against the units.

11 b. In a cooperative:

12 (1) If an association receives notice of an impending foreclosure on
13 all or any portion of the association's real estate, the association shall
14 promptly transmit a copy of that notice to each unit owner of a unit
15 located within the real estate to be foreclosed. Failure of the
16 association to transmit the notice shall not affect the validity of the
17 foreclosure.

18 (2) Whether or not a unit owner's unit is subject to the claims of the
19 association's creditors, no other property of a unit owner shall be
20 subject to those claims.

21

22 66. (New section) a. Except as otherwise provided in this section,
23 all records of the association required to be maintained, including but
24 not limited to all books, financial notes, contracts, and financial
25 records, shall be made available for inspection or for copying to unit
26 owners or to their duly authorized representatives, upon written
27 request, within seven business days of receipt of the request and at a
28 charge not to exceed the reasonable cost of reproduction; provided,
29 in the case of records maintained in printed form, in no event shall the
30 charge exceed 20 cents per page reproduced. If a unit owner or duly
31 authorized representative seeks to inspect records, no charge shall be
32 imposed by the association for the first hour of inspection occurring
33 in any one-week period. A reasonable charge based upon actual cost
34 to the association may be imposed for any longer period of inspection
35 time required; provided, that where the inspection time is in excess of
36 two hours in any one-week period, the person maintaining the records
37 on behalf of the association may decline to continue the inspection for
38 more than two hours so long as an appointment for additional
39 inspection time is established for a date within five business days
40 thereafter. The association shall not require a unit owner to state a
41 reason for a request to inspect or copy records. In the event that the
42 records are located off-site or the request involves the production and
43 copying of a large volume of documents in the estimation of the
44 association, the association shall have an additional seven business
45 days to comply. A fee to cover postage may be charged by an
46 association to the person requesting the documents. Nothing in this

1 subsection shall be construed as requiring an association to research
2 its records at the request of a unit owner. The association's obligation
3 to provide records will be satisfied by providing all records within the
4 category of documents where the owner's request may be referenced.

5 b. An association shall not be required to make available any
6 records the disclosure of which would be an unreasonable violation of
7 the privacy of any unit owner; provided, however, that unpaid
8 common expenses which are overdue by more than 120 days shall not
9 be deemed a private matter. An association shall not be required to
10 make available any records dealing with pending or anticipated
11 litigation or contract negotiations, or with any matter falling within the
12 attorney-client privilege, to the extent that confidentiality is required
13 for the attorney to discharge his or her ethical duties as a lawyer, or
14 with respect to any matter involving the employment, promotion,
15 discipline, or dismissal of a specific officer or employee of the
16 association; provided, however, that the amount of wages, salaries and
17 bonuses paid to, and the value of benefits received by, any such
18 employee or officer, and the qualifications and credentials of any such
19 employee or officer, shall be required to be made available. Any
20 record not required to be made available in accordance with this
21 subsection shall be made available at such time when there shall no
22 longer be a need to maintain confidentiality.

23 c. Any denial of access to records shall indicate the specific reasons
24 why allowing inspection of the records would violate the rights of any
25 unit owner or otherwise be in violation of subsection b. of this section.
26 A unit owner who is aggrieved by denial of access to records shall
27 have the right to appeal the denial to the commissioner.

28 d. An association shall maintain detailed financial and business
29 records, including a record of all receipts and expenditures, for a
30 period which complies with customary business standards and
31 procedures and would allow a full and accurate auditing of all records,
32 but in any event for not less than seven years, unless the governing
33 documents of the association require a longer period. All records
34 required to be made available to a purchaser upon resale of a unit shall
35 be made available to a unit owner within one business day upon
36 written request.

37 e. An association shall maintain, and make available to any unit
38 owner within five business days, a permanent record of all notices and
39 orders issued by any governmental agency having jurisdiction over the
40 association or the common interest community. The record shall also
41 include documentation of all actions taken in response to any such
42 notice or order and shall identify the persons responsible for the matter
43 that gave rise to the notice or order.

44 f. Every association having gross annual receipts in excess of
45 \$75,000 shall have a certified annual audit prepared of its financial
46 books and records, which audit shall be available within 180 days of

1 the expiration of the fiscal year for which it is performed. In the event
2 that the association is unable, for good cause, to make the audit
3 available to unit owners within 180 days of the expiration of the fiscal
4 year, a statement setting forth the reason for the delay shall be issued
5 to the unit owners by the executive board. Every association having
6 gross annual receipts of at least \$25,000, but not more than \$75,000,
7 shall have such an audit prepared not less frequently than once every
8 three years. All audits shall be prepared by a New Jersey certified
9 public accountant in accordance with generally accepted accounting
10 principles.

11 g. An association shall provide each unit owner, upon request, with
12 a copy of the most recent annual financial statement of the association
13 within seven days of the request and at no cost to the unit owner.

14 h. A unit owner may notify the Commissioner of Community
15 Affairs upon the failure of an association to comply with requests
16 made under subsections a., e. or g. of this section. Upon investigation,
17 the commissioner shall have the power to order the compliance of the
18 association with such a request.

19

20 67. (New section) With respect to a third person dealing with the
21 association in the association's capacity as a trustee, the existence of
22 trust powers and their proper exercise by the association shall be
23 assumed without inquiry. A third person shall not be bound to inquire
24 whether the association has power to act as trustee or is properly
25 exercising trust powers. A third person, without actual knowledge that
26 the association is exceeding or improperly exercising its powers, shall
27 be fully protected in dealing with the association as if it possessed and
28 properly exercised the powers it purports to exercise. A third person
29 shall not be bound to assure the proper application of trust assets paid
30 or delivered to the association in its capacity as trustee.

31

32 68. (New section) a. Subject to the rights of holders of first
33 security interests, an association may collect, from rent due from a
34 tenant to a delinquent unit owner, an amount that is not more than any
35 unpaid common expenses, late fees, interest, and costs of collection,
36 including reasonable attorney's fees, which have been duly assessed
37 against the unit owner. "Delinquent unit owner" means a unit owner
38 who owes common expense fees which are 30 or more days past due.

39 b. Prior to taking any action permitted by this section, an
40 association shall give written notice, by certified mail, return receipt
41 requested, to the delinquent unit owner at the unit owner's last known
42 address of its intent to collect the rent. The notice shall set forth the
43 exact amount the association claims is due and shall indicate the intent
44 of the association to collect the amount due from rent, along with any
45 other amounts which become due in the future and which remain
46 unpaid for 30 days after becoming due, including any common expense

1 fees lawfully accelerated pursuant to the declaration or bylaws. A
2 copy of the notice shall be sent to the holder of the unit's first security
3 interest of record. Any cost incurred by the association to ascertain
4 the identity of the holder of the first security interest, including the
5 cost of the preparation of a title search, shall constitute additional
6 common expense fees due with respect to the unit.

7 c. A delinquent unit owner shall have 10 days from receipt of the
8 notice required to be sent pursuant to subsection b. of this section to
9 provide proof of payment or a statement of the grounds upon which
10 the assessment is disputed. Upon the failure of the unit owner to
11 respond within 10 days after receipt of the notice, or within 15 days
12 of mailing if no receipt is obtained, and provided that no notice is
13 received from the holder of the first security interest that it is
14 exercising its right of assignment of rental proceeds, the association
15 shall be entitled to notify and direct each tenant renting a unit from the
16 delinquent unit owner to pay to the association all or a portion of the
17 rent otherwise due the delinquent unit owner. The amount to be
18 applied from the rent shall be limited to the lesser of: (1) the amount
19 as stated in the notice to the delinquent unit owner or, (2) an amount
20 adjusted to reflect any calculation errors sought to be corrected by the
21 unit owner, as stated in the response to the association, if timely sent.
22 No offset shall be allowed for amounts which are unrelated to claims
23 of calculation errors. The association shall have a continuing right to
24 collect the rent from the tenant or tenants until the delinquent sum is
25 satisfied in full.

26 d. Nothing in this section shall prevent a unit owner or association
27 from seeking a judicial remedy in a court of competent jurisdiction. If
28 a court determines that a unit owner or association intentionally
29 misrepresented or misstated a material fact, then the prevailing party
30 shall be entitled to recover from the other party an amount equal to:
31 (1) reasonable attorney's fees ; (2) three times the unpaid assessment
32 alleged by the association to be due; and (3) if the association is the
33 prevailing party, the common expense fees accruing and remaining
34 unpaid after the date of filing of the action.

35 e. A holder of a first security interest which is entitled to an
36 assignment of rents and which has exercised its rights by written notice
37 recorded at the county recording office in the county in which the
38 property is located, and by written notice sent by certified mail to the
39 association from which it received notice pursuant to subsection b. of
40 this section, may collect such rents in accordance with an assignment
41 of rents under which it is an assignee.

42

43 69. (New section) a. An association shall conduct elections under
44 the auspices of a committee of unit owners, none of whom shall be
45 current board members or candidates for the board, which shall
46 function independently of the executive board, or by using the services

1 of a qualified independent individual or organization taken from a list
2 provided by the department. The committee or independent individual
3 or organization, as the case may be, shall be responsible for
4 determining the eligibility of unit owners to vote or to run for office,
5 for counting ballots and for verifying results. No unit owner shall be
6 disqualified from running for office except for reason of nonpayment
7 of assessments, legal fees, late fees, fines imposed in accordance with
8 section 50 of P.L. , c. (C.) (pending before the Legislature as
9 this bill) or of a final determination of a violation of the declaration,
10 bylaws or rules of the association, which violation remains uncured at
11 the time of determination of disqualification. The association shall
12 give all unit owners at least 60 days advance notice of the election so
13 as to allow all eligible persons who might be interested in filing as
14 candidates a reasonable opportunity to do so. No person shall be
15 disqualified from voting in an election for any reason other than
16 delinquency in the payment of maintenance charges. Any person who
17 is disqualified from voting or running for office and wishes to
18 challenge that disqualification may appeal the disqualification to the
19 department, which shall investigate and decide the matter. A person
20 who is disqualified and wishes to appeal the disqualification may cast
21 a ballot that shall be kept apart from the other ballots and counted only
22 in the event that the disqualification is overruled on appeal; provided,
23 however, that any such ballot that is kept apart from the other ballots
24 need only be counted if there is any possibility that it might affect the
25 outcome of the election. Unit owners shall be allowed to cast ballots
26 anonymously by mail, in person, or where the association permits, by
27 electronic ballot. A mailed ballot or an electronic ballot shall be
28 deemed to be a proxy for purposes of determining a quorum for the
29 meeting at which the election is conducted. A non-directed proxy
30 ballot may be counted only in voting for an office for which there are
31 not as many listed candidates as there are positions to be filled. All
32 candidates shall be afforded the opportunity to observe the entire
33 process of counting and tabulation of the ballots, either in person or
34 through a designated representative, and shall have access to lists of
35 persons who are eligible to vote and, after the voting has started, to
36 any list of persons who have voted that the association may maintain.
37 Any challenge to the validity of an election shall be submitted to the
38 executive board and to the department within 30 days following the
39 date on which written notice of the results of the election is given to
40 members of the association. Pending the outcome of any such
41 challenge, the persons declared to be elected by the committee,
42 individual or organization responsible for conducting the election shall
43 serve as de facto officers or trustees, as the case may be. Ballots,
44 envelopes, registration records, eligibility lists, proofs of mailing, and
45 other voting materials shall be subject to inspection by all unit owners
46 at the time of the election and shall be sealed after the election and

1 kept unopened, in the custody of a licensed certified public accountant
2 or the organization that conducted the election for not less than 30
3 days following the election, or until such later time as any challenge to
4 the election brought within that 30-day period has been resolved and
5 the documents are no longer required. Voting materials and
6 procedures shall at all times be subject to inspection and review by the
7 commissioner. The parties to any dispute shall be allowed the
8 opportunity to be present or be represented at any such inspection and
9 review.

10 b. Upon the written request of any candidate submitted at least 10
11 days prior to the scheduled election, the commissioner may appoint
12 one or more persons to monitor an election to ensure fairness and
13 accuracy, if previous documented evidence of election problems within
14 an association exists. A candidate may also request the commissioner
15 to investigate any allegations of fraud or abuse in election proceedings.
16 The commissioner shall have power to invalidate any election in which
17 the commissioner finds there to have been fraud or any other abuse of
18 the electoral process, including, but not limited to, denial of equal
19 access to all eligible voters for all candidates. In the event that any
20 association fails or refuses to conduct a fair and open election at such
21 time as elections are required for such association, the commissioner
22 shall order that the election be conducted at such time and under such
23 supervision as the commissioner shall direct, or the commissioner shall
24 conduct the election directly.

25 c. If, at the time that all nominations are closed, the number of
26 candidates for each office does not exceed the number of open
27 positions for each such office, all candidates may be declared elected
28 without the necessity for further compliance with the provisions of this
29 section. If the association has not formed an election committee or
30 enlisted the services of a qualified independent individual or
31 organization because, immediately prior to the election meeting, no
32 positions were contested, but one or more positions become contested
33 as a result of nominations made at the meeting, an election committee
34 shall be created to conduct the election to the contested position or
35 positions that shall be composed of representatives designated by the
36 candidates.

37
38 70. (New section) Notwithstanding any term of P.L. , c. (C.)
39 (pending before the Legislature as this bill), or of any other law or the
40 governing documents of an association to the contrary, an association
41 shall not be required to enforce a violation of a rule, regulation or
42 restrictive covenant when an association or its employees or agents
43 cannot, in the ordinary discharge of their functions, objectively
44 determine that there exists a violation of such rules, regulations or
45 restrictive covenants. Nothing herein shall prohibit an association
46 from enforcing a violation that it is not required to enforce, provided

1 that the association shall undertake such enforcement pursuant to the
2 terms of P.L. , c. (C.) (pending before the Legislature as this
3 bill). Any unit owner may enforce the rules, regulations and restrictive
4 covenants of the association through an action filed with a court of
5 competent jurisdiction, or by alternative dispute resolution
6 proceedings in accordance with section 86 of P.L. , c. (C.)
7 (pending before the Legislature as this bill). Any association refusing
8 to enforce an alleged violation of a rule, regulation or restrictive
9 covenant pursuant to the terms of this section shall have no liability to
10 any unit owner or third party for such refusal.

11

12 71. (New section) a. An association, to the extent practicable,
13 shall solicit a minimum of three bids for any contract for services or
14 materials whenever the amount payable by the association in
15 connection with the services or materials exceeds \$17,500, or such
16 higher amount as may be established by the Governor as the basic bid
17 threshold amount for local public contracts, in accordance with section
18 3 of P.L 1971, c.198 (C.40A:11-3), in any 12-month period. An
19 association shall solicit in a uniform manner, containing the required
20 specifications, a minimum of three sealed bids, to be opened only at a
21 publicly announced meeting open to all unit owners, which may be
22 either a meeting of the executive board or of a committee appointed
23 by the executive board. These bidding requirements shall also apply
24 in any case in which the aggregate amount that might be paid to a
25 single entity or a group of entities under common control for different
26 services would exceed the stated thresholds. The thresholds shall not
27 be applicable, however, to payments in excess of the threshold
28 amounts that are necessarily incurred as a result of circumstances not
29 anticipated at the time that the contract was awarded. The association
30 shall award the contract to the vendor who provided the lowest bid,
31 unless the board determines, for good cause that shall be expressly
32 stated at a meeting open to attendance by the owners, that it would be
33 in the best interests of the residents of the common interest community
34 to award the contract to a vendor other than that vendor. The
35 executive board shall have the right to negotiate with vendors for
36 terms more favorable to the association after opening all bids and prior
37 to awarding a contract. The requirements of this section shall not give
38 rise to a cause of action by a vendor who provides a bid to an
39 executive board. No member of an executive board or manager or
40 other person employed by, or acting on behalf of, an association shall
41 make any disclosure that gives an advantage to any bidder or
42 otherwise compromises or interferes with the integrity and fairness of
43 the bidding process.

44 b. The following contracts shall be exempted from the bidding
45 requirements of this section:

46 (1) purchase of commodities at retail establishments; provided,

- 1 however, that at least three prices shall be obtained for all purchases
- 2 of a single commodity exceeding \$1,000;
- 3 (2) renewal of an existing contract for services, unless the increase
- 4 in payments would exceed the greater of five percent or the average
- 5 increase in the most-recently published Consumer Price Index for
- 6 Urban Wage Earners issued by the United States Department of Labor
- 7 and applicable to the New York and Philadelphia regions, or unless the
- 8 contract had not been bid for at least four years;
- 9 (3) professional services of attorneys, accountants, community
- 10 managers, engineers, and architects; provided, however, that the
- 11 executive board shall in each instance state supporting reasons for its
- 12 action in the resolution awarding each contract and shall give notice,
- 13 stating the nature, duration, service, and amount of the contract and
- 14 that the resolution and contract are on file and available for inspection
- 15 by members of the association at the offices of the association, in a
- 16 manner that may reasonably be expected to enable all members of the
- 17 association to be informed;
- 18 (4) the printing of documents to be used in any legal proceeding;
- 19 (5) contracts whenever necessary to prevent or ameliorate an
- 20 imminent peril to life or property; provided, however, that this
- 21 exception shall apply only to the extent necessary to eliminate the
- 22 imminent peril;
- 23 (6) doing of work by any employee of the association in the course
- 24 of such employment;
- 25 (7) purchase of perishable foods as a subsistence supply;
- 26 (8) supplying of any product or the rendering of any service by a
- 27 public utility in accordance with tariffs or schedules of charges filed
- 28 with the public entity having regulatory jurisdiction;
- 29 (9) equipment repair service of an emergency or exceptional nature,
- 30 and necessary parts furnished in connection with such service, under
- 31 circumstances that would make competitive bidding impracticable or
- 32 otherwise not in the best interest of the association. A written
- 33 statement specifying such circumstances shall be maintained as an
- 34 association record open to examination by homeowners;
- 35 (10) the publication of legal s in newspapers;
- 36 (11) the acquisition of artifacts or other items of unique intrinsic,
- 37 artistic or historical character;
- 38 (12) goods and services necessary or required to prepare and
- 39 conduct an election;
- 40 (13) insurance, including the purchase of insurance coverage and
- 41 consultant services, under circumstances that would make competitive
- 42 bidding impracticable or otherwise not in the best interest of the
- 43 association. A written statement specifying such circumstances shall
- 44 be maintained as an association record open to examination by
- 45 homeowners;
- 46 (14) library and educational goods and services;

1 (15) cooperative or other marketing of recycling materials
2 recovered through a recycling program;

3 (16) vehicle towing and storage contracts at rates and charges not
4 exceeding those established by the municipality in which the common
5 interest community is located, pursuant to section 1 of P.L.1979,
6 c.101 (C.40:48-2.49);

7 (17) purchase of steam or electricity;

8 (18) wastewater treatment services;

9 (19) expenses for travel and conferences; and

10 (20) provision or performance of goods or services for the support
11 or maintenance of proprietary computer hardware and software.

12 c. An association of members in a community having fewer than 30
13 residential units, through a resolution adopted pursuant to an open
14 meeting and by a unanimous vote of all of the members, may waive
15 any or all of the provisions of this section.

16 d. Any two or more associations may contract for goods or services
17 jointly in accordance with the provisions of this section.

18 e. The provisions of this section shall not be applicable to any
19 contract in existence prior to the effective date of P.L. , c. (C.)
20 (pending before the Legislature as this bill).

21

22 72. (New section) a. Except as otherwise provided in this
23 section, no member of the executive board, or employee or community
24 manager of an association shall have an interest in a business
25 organization or engage in any business, transaction or professional
26 activity, which is in conflict with the proper discharge of his or her
27 duties on behalf of the association, including, but not limited to,
28 having a direct or indirect interest in any contracts for work or
29 materials used by the association, or in any sales, leases or agreements
30 in connection with any lands owned or managed by the association,
31 or in any fees or compensation of any kind paid to or owed to any
32 broker, architect, engineer, vendor or other person doing business with
33 the association. A member of the executive board, or employee or
34 community manager of an association, who has any interest that is
35 actually or potentially in conflict with his or her duties on behalf of the
36 association, may continue in his or her capacity with the association
37 provided that he or she promptly discloses the conflicting relationship
38 at a meeting open to the members of the association and recuses
39 himself or herself from all involvement in the transaction on behalf of
40 the executive board, which recusal shall be duly noted in the minutes
41 of the meeting at which it occurred; provided, however, that a
42 community manager who has recused himself or herself from the
43 process of selecting a vendor with which he or she is affiliated may
44 perform such services as may be required to fulfill the requirements
45 of the contract once it has been duly executed. Failure of a member
46 of an executive board, or an employee or community manager of an

1 association, to comply with this requirement, or failure of a vendor to
2 disclose any such conflicting relationship with any person required to
3 recuse himself or herself who has not done so, shall make the contract
4 voidable by the association.

5 b. No board member, employee or community manager shall use his
6 or her position to secure or attempt to secure unwarranted privileges
7 for any person.

8 c. No board member, employee or community manager shall act in
9 his or her capacity as a board member or employee or community
10 manager in any matter in which he or she, a related person, or any
11 other person residing in his or her household or the household of a
12 related person, or any business organization in which any of such
13 persons has an interest, has a direct or indirect financial or personal
14 involvement that might reasonably be expected to impair the
15 objectivity or independence of judgment of the board member,
16 employee or community manager.

17 d. No executive board of an association shall employ or award a
18 contract to a former member of that executive board until at least one
19 year shall have expired after the end of the former member's service as
20 a member of the executive board.

21 e. A community manager who is directly or indirectly affiliated with
22 any business entity that provides services or otherwise contracts with
23 any common interest community shall file with the executive board of
24 the association a list of all such affiliated entities, which list shall be
25 updated at least annually and whenever any change occurs. It shall be
26 the obligation of the community manager and of the affiliate to
27 disclose the affiliation relationship at any time that the affiliate submits
28 a bid to an association employing the community manager. If any such
29 affiliate submits a bid to an association, the exemptions set forth in
30 section 71 of P.L. , c. (C.) (pending before the Legislature as
31 this bill) shall not apply and the bids shall be sealed and be opened at
32 an open meeting in the same manner as any other non-exempt bids.
33 All payments to any such affiliate shall be made only after at least two
34 members of the executive board shall have certified that the work was
35 performed in a satisfactory manner and shall either sign off on the
36 invoice or sign the check. Failure of either the community manager or
37 the affiliate to comply with the requirements of this subsection shall
38 render the contract voidable by the association at its option; provided,
39 however, that the contract shall not be voidable if necessary service
40 are rendered, or necessary goods are provided, in an emergency
41 situation in which it is not possible to get prior approval of members
42 of the executive board, and any affiliation relationship that has not
43 previously been disclosed is disclosed as soon thereafter as possible.

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ARTICLE 4
PROTECTION OF PURCHASERS

73. (New section) a. Sections 73 through 88 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be applicable to all units subject to P.L. , c. (C.) (pending before the Legislature as this bill), except as provided in subsection b. of this section.

b. A resale certificate need not be prepared or delivered in the case of a:

- (1) gratuitous disposition of a unit;
- (2) disposition pursuant to court order;
- (3) disposition by a government or governmental agency;
- (4) disposition by foreclosure or deed in lieu of foreclosure;
- (5) disposition to a dealer;
- (6) disposition that may be canceled at any time and for any reason by the purchaser without penalty; or
- (7) disposition of a unit restricted to nonresidential use, unless a majority of the voting interests in a common interest community devoted to nonresidential use determines that sections 73 through 88 of P.L. , c. (C.) (pending before the Legislature as this bill) shall apply, in full or part.

74. (New section) a. Except as provided in subsection b. of this section, a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of section 8 of "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-28).

b. A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant pursuant to section 52 of P.L. , c. (C.) (pending before the Legislature as this bill) or to a dealer who intends to offer units in the common interest community. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection a. of this section.

c. If a unit is part of a common interest community and is part of another common interest community in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.) as those requirements relate to each regime in which the unit is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing two or more public offering statements.

1 75. (New section) P.L. , c. (C.) (pending before the
2 Legislature as this bill) shall not affect or amend the terms or
3 applicability of "The Planned Real Estate Development Full Disclosure
4 Act," P.L.1977, c.419 (C.45:22A-21 et seq.), except as expressly set
5 forth in sections 2, 74 and 76 of P.L. , c. (C.) (pending before
6 the Legislature as this bill).

7
8 76. (New section) If the declaration provides that ownership or
9 occupancy of any units is or may be in time shares, the public offering
10 statement in addition to the information required by section 8 of "The
11 Planned Real Estate Development Full Disclosure Act," P.L.1977,
12 c.419 (C.45:22A-28) shall disclose the:

- 13 a. number and identity of units in which time shares may be created;
- 14 b. total number of time shares that may be created;
- 15 c. minimum duration of any time shares that may be created; and
- 16 d. extent to which the creation of time shares will or may affect the
17 enforceability of the association's lien for assessments provided in
18 section 64 of P.L. , c. (C.) (pending before the Legislature as
19 this bill).

20
21 77. (New section) a. Except in the case of a sale in which delivery
22 of a public offering statement is required pursuant to section 8 of "The
23 Planned Real Estate Development Full Disclosure Act," P.L.1977,
24 c.419 (C.45:22A-28) or unless exempt under subsection b. of section
25 73 of P.L. , c. (C.) (pending before the Legislature as this bill),
26 a unit owner shall furnish to a purchaser before the earlier of the date
27 of conveyance or transfer of the right to possession of a unit, a copy
28 of the declaration (other than any plats and plans), the bylaws, the
29 rules or regulations of the association, and a certificate containing:

30 (1) a statement disclosing the effect on the proposed disposition of
31 any right of first refusal or other restraint on the free alienability of the
32 unit held by the association;

33 (2) a statement setting forth the amount of the periodic common
34 expense assessment currently due and payable from the selling unit
35 owner;

36 (3) a statement of any other fees payable by the owner of the unit
37 being sold;

38 (4) a statement of any capital expenditures approved by the
39 association for the current and two next succeeding fiscal years;

40 (5) a statement of the amount of any reserves for capital
41 expenditures and of any portions of those reserves designated by the
42 association for any specified projects;

43 (6) the most recently prepared balance sheet and income and
44 expense statement, if any, of the association;

45 (7) the current operating budget of the association;

46 (8) a statement of any unsatisfied judgments against the association

1 and the status of any pending suits in which the association is a
2 defendant;

3 (9) a statement describing any insurance coverage maintained by the
4 association;

5 (10) a statement as to whether the executive board has given or
6 received written that any existing uses, occupancies, alterations, or
7 improvements in or to the unit or to the limited common elements
8 assigned thereto violate any provision of the declaration;

9 (11) a statement as to whether the executive board has received
10 written from a governmental agency of any violation of
11 environmental, health, or building code with respect to the unit, the
12 limited common elements assigned thereto, or any other portion of the
13 common interest community which have not been cured;

14 (12) a statement of the remaining term of any leasehold estate
15 affecting the common interest community and the provisions governing
16 any extension or renewal thereof;

17 (13) a statement of any restrictions in the declaration affecting the
18 amount that may be received by a unit owner upon sale, condemnation,
19 casualty loss to the unit or the common interest community, or
20 termination of the common interest community;

21 (14) in a cooperative, an accountant's statement, if any was
22 prepared, as to the deductibility for federal income tax purposes by the
23 unit owner of real estate taxes and interest paid by the association;

24 (15) a statement describing any pending sale or encumbrance of
25 common elements; and

26 (16) a statement disclosing the effect on the unit to be conveyed of
27 any restrictions on the owner's right to use or occupy the unit or to
28 lease the unit to another person.

29 b. The association, within 10 days after a request by a unit owner,
30 shall furnish a certificate containing the information necessary to
31 enable the unit owner to comply with this section. A unit owner
32 providing a certificate pursuant to subsection a. of this section, and
33 any real estate broker or sales agent who provides brokerage services
34 to the unit owner or purchaser shall not be liable to the purchaser for:

35 (1) any erroneous information provided by the association and
36 included in the certificate, or

37 (2) any matter related to the common interest community except,
38 with respect to liability between the unit owner and a purchaser, as
39 may otherwise be agreed in writing.

40 c. A purchaser, other than a purchaser through a foreclosure, shall
41 not be liable for any unpaid assessment or fee greater than the amount
42 set forth in the certificate prepared by the association. A unit owner
43 shall not be liable to a purchaser for the failure or delay of the
44 association to provide the certificate in a timely manner, but the
45 purchase contract shall be voidable by the purchaser until the
46 certificate has been provided and for five days thereafter or until

1 conveyance, whichever first occurs.

2 d. The seller shall notify the association, not less than 30 days prior
3 to the proposed settlement date for the sale, of the names, addresses
4 and telephone numbers of the prospective purchasers. The association
5 shall, upon notification, alert the seller, in writing, to any violations of
6 record that have not been remedied, and shall provide a copy of the
7 to the purchaser. The association shall, within three business days
8 following receipt of a written request from purchaser, mail written
9 notice to the purchaser confirming whether the outstanding violation
10 has been cured. If purchaser fails to confirm that the violation has
11 been cured prior to settlement, the purchaser shall become responsible
12 for curing the violation.

13

14 78. (New section) a. In the case of a sale of a unit where delivery
15 of a public offering statement is required pursuant to "The Planned
16 Real Estate Development Full Disclosure Act," P.L.1977, c.419
17 (C.45:22A-21 et seq.), a seller:

18 (1) before conveying a unit, shall record or furnish to the purchaser
19 releases of all liens, except:

20 (a) liens on real estate that a declarant has the right to withdraw
21 from the common interest community, or

22 (b) that the purchaser expressly agrees to take subject to or assume,
23 and that encumber:

24 (i) in a condominium, that unit and its common element interest,
25 and

26 (ii) in a cooperative or planned community, that unit and any limited
27 common elements assigned thereto;

28 (2) shall provide a surety bond or substitute collateral for, or
29 insurance against, the lien as provided for liens on real estate in the
30 "Construction Lien Law," P.L.1993, c.318 (C.2A:44A-1 et seq.).

31 b. Before conveying real estate to the association, the declarant
32 shall have that real estate released from:

33 (1) all liens the foreclosure of which would deprive unit owners of
34 any right of access to or easement of support of their units, and

35 (2) all other liens on that real estate unless the public offering
36 statement describes certain real estate that may be conveyed subject to
37 liens in specified amounts.

38

39 79. (New section) a. A unit may be sold by the sheriff on
40 execution, free of any claim that is not a lien of record for common
41 expenses or other assessments by the association, but any funds
42 derived from that sale remaining after satisfaction of prior liens and
43 charges, but before distribution to the previous unit owner, shall be
44 applied to payment of such unpaid common expenses or other
45 assessments if written notice thereof shall have been given to the
46 sheriff before distribution. Any such unpaid common expenses which

1 shall remain uncollectible from the former unit owner for a period of
2 more than 60 days after such sheriff's sale may be reassessed by the
3 association as common expenses to be collected from all unit owners,
4 including the purchaser who acquired title at the sheriff's sale, his
5 successors and assigns. Unless prohibited by the master deed,
6 declaration or bylaws, the association may bid in and purchase the unit
7 at a sheriff's sale, and acquire, hold, lease, mortgage, and convey the
8 same.

9 b. Notwithstanding any foreclosure, tax sale or other forced sale of
10 a unit, all applicable provisions of the master deed, declaration and
11 bylaws shall be binding upon any purchaser at such sale to the same
12 extent as they would bind a voluntary grantee, except that such
13 purchaser shall not be liable for the share of common expenses or
14 other assessments by the association pertaining to such unit or
15 chargeable to the former owner which became due prior to such sale
16 except as otherwise provided in subsection a. of this section.

17

18 80. (New section) a. Express warranties made by any seller to a
19 purchaser of a unit, if relied upon by the purchaser, shall be created as
20 follows:

21 (1) Any affirmation of fact or promise which relates to the unit, its
22 use, or rights appurtenant thereto, area improvements to the common
23 interest community that would directly benefit the unit, or the right to
24 use or have the benefit of facilities not located in the common interest
25 community, shall create an express warranty that the unit and related
26 rights and uses will conform to the affirmation or promise.

27 (2) Any model or description of the physical characteristics of the
28 common interest community, including plans and specifications of or
29 for improvements, shall create an express warranty that the common
30 interest community will conform to the model or description, unless
31 express disclaimers in language in common understanding calling the
32 purchaser's attention to the exclusion of this warranty are displayed on
33 the plans and specifications, or in the model, and are explicitly
34 referenced in the sales contract.

35 (3) Any description of the quantity or extent of the real estate
36 comprising the common interest community, including plats or
37 surveys, shall create an express warranty that the common interest
38 community will conform to the description, subject to customary
39 tolerances.

40 (4) A provision that a purchaser may put a unit to a specified use
41 is an express warranty that the specified use is lawful.

42 b. Neither formal words, such as "warranty" or "guarantee," nor a
43 specific intention to make a warranty, shall be necessary to create an
44 express warranty of quality, but a statement purporting to be merely
45 an opinion or commendation of the real estate or its value shall not
46 create a warranty.

1 c. Any conveyance of a unit transfers to the purchaser all express
2 warranties of quality made by previous sellers.

3 d. Nothing in this section shall be construed to impair or negate any
4 warranties which may have been created pursuant to any other law or
5 regulation, including those warranties provided pursuant to "The New
6 Home Warranty and Builders' Registration Act," P.L.1977, c.467
7 (C.46:3B-1 et seq.).

8

9 81. (New section) a. Unless the limitation period is tolled under
10 section 59 of P.L. , c. (C.) (pending before the Legislature as
11 this bill) or affected by subsection d. of this section, a judicial
12 proceeding for breach of any obligation arising under section 80 of
13 P.L. , c. (C.) (pending before the Legislature as this bill), shall
14 be commenced within six years after the cause of action accrues.

15 b. Subject to subsection c. of this section, a cause of action for
16 breach of warranty of quality, regardless of the purchaser's lack of
17 knowledge of the breach, shall accrue:

18 (1) as to a unit, at the time the purchaser to whom the warranty is
19 first made enters into possession if a possessory interest was
20 conveyed, or at the time of acceptance of the instrument of
21 conveyance if a non-possessory interest was conveyed; and

22 (2) as to each common element, at the time the common element is
23 completed or, if later, as to (a) a common element that is added to the
24 common interest community by exercise of development rights, at the
25 time the first unit which was added to the condominium by the same
26 exercise of development rights is conveyed to a bona fide purchaser,
27 or (b) a common element within any other portion of the common
28 interest community, at a time the first unit is conveyed to a bona fide
29 purchaser.

30 c. If a warranty of quality explicitly extends to future performance
31 or duration of any improvement or component of the common interest
32 community, the cause of action shall accrue at the time the breach is
33 discovered or at the end of the period for which the warranty explicitly
34 extends, whichever is earlier.

35 d. During the period of declarant control, the association may,
36 pursuant to section 88 of P.L. , c. (C.) (pending before the
37 Legislature as this bill), authorize an independent committee of the
38 executive board to evaluate and enforce by any lawful means warranty
39 claims involving the common elements, and to compromise those
40 claims. If the committee is so created, the limitation period for claims
41 for these warranties shall begin to run from the date of the first
42 meeting of the committee, regardless of when the period of declarant
43 control terminates.

44 e. Nothing in this section shall be construed to impair or negate any
45 warranties which may have been created pursuant to any other law or
46 regulation, including those warranties provided pursuant to "The New

1 Home Warranty and Builders' Registration Act," P.L.1977, c.467
2 (C.46:3B-1 et seq.).

3
4 82. (New section) a. If a declarant or any other person subject to
5 P.L. , c. (C.) (pending before the Legislature as this bill) fails to
6 comply with any of its provisions or any provision of the declaration
7 or bylaws, any person or class of persons adversely affected by the
8 failure to comply shall have a claim for appropriate relief. Punitive
9 damages may be awarded for a willful failure to comply with P.L. ,
10 c. (C.) (pending before the Legislature as this bill). The court, as
11 appropriate, may award court costs and reasonable attorney's fees .

12 b. Parties to a dispute arising under P.L. , c. (C.) (pending
13 before the Legislature as this bill), the declaration, or the bylaws may
14 agree to resolve the dispute by any form of binding or non-binding
15 alternative dispute resolution, but;

16 (1) a declarant may agree with the association to do so only after
17 the period of declarant control passes, unless the agreement is made
18 with an independent committee of the executive board elected
19 pursuant to section 88 of P.L. , c. (C.) (pending before the
20 Legislature as this bill); and

21 (2) an agreement to submit to alternative dispute resolution other
22 than that provided under section 86 of P.L. , c. (C.) (pending
23 before the Legislature as this bill) shall be in a writing signed by the
24 parties.

25 Nothing in this section shall affect the right of a unit owner to
26 submit a matter to alternative dispute resolution pursuant to section
27 86 of P.L. , c. (C.) (pending before the Legislature as this bill).

28
29 83. (New section) No promotional material shall be displayed or
30 delivered to a prospective purchaser which describes or portrays an
31 improvement that is not in existence unless the description or portrayal
32 of the improvement in the promotional material is conspicuously
33 labeled or identified either as "MUST BE BUILT" or as "NEED NOT
34 BE BUILT."

35
36 84. (New section) a. Except for improvements labeled "NEED
37 NOT BE BUILT" the declarant shall complete all recreational and
38 parking facilities or amenities depicted on any site plan or other
39 graphic representation, including any plats or plans prepared pursuant
40 to section 32 of P.L. , c. (C.) (pending before the Legislature
41 as this bill), whether or not that site plan or other graphic
42 representation is contained in the public offering statement or in any
43 promotional material distributed by or for the declarant.

44 b. The declarant shall be subject to liability for the prompt repair
45 and restoration, to a condition compatible with the remainder of the
46 common interest community affected by the exercise of rights reserved

1 pursuant to or created by sections 33 through 37, 39 and 40 of P.L. ,
2 c. (C.) (pending before the Legislature as this bill).

3
4 85. (New section) In the case of a sale of a unit in which delivery
5 of a public offering statement is required, a contract of sale may be
6 executed, but no interest in that unit may be conveyed until the
7 declaration is recorded and the unit is substantially completed, as
8 evidenced by an independent licensed architect, surveyor or engineer,
9 or by issuance of a certificate of occupancy authorized by law.

10
11 86. (New section) a. Every association shall offer an alternative
12 dispute resolution procedure that shall be readily available as a
13 cost-effective alternative to litigation for the resolution of qualified
14 disputes between individual owners and the association, and between
15 different owners. For the purposes of this section, a "qualified dispute"
16 shall be construed broadly, and means those disputes involving the
17 common interest community, the bylaws or the rules of the
18 association. An association shall not be required to offer alternative
19 dispute resolution proceedings for a dispute that is exclusively a
20 personal dispute between two or more parties and which is unrelated
21 to the common elements, or for a dispute regarding collection of an
22 unpaid assessment, or for a dispute that does not involve the actual or
23 prospective imposition of a fine or loss or denial of privileges.
24 Assessments, late fees, and fines for nonpayment of assessments or
25 late fees may be challenged in an alternative dispute resolution
26 proceeding, but only on the grounds that they were not authorized by
27 the governing documents or by law or that the method utilized for
28 imposing them was not consistent with the procedure set forth in the
29 declaration, bylaws or law.

30 b. Alternative dispute resolution shall be effectuated through
31 implementation of a mediation-arbitration procedure utilizing
32 independent persons trained in both mediation and arbitration. The
33 persons acting as mediators and arbitrators shall comply with the
34 procedural rules established by the commissioner, which shall include
35 sufficient training for mediating and arbitrating disputes in a common
36 interest community and meeting minimum requirements concerning
37 knowledge of common interest community practices and procedures
38 and the statutory and common law affecting common interest
39 communities. Qualifications for volunteer or professional dispute
40 resolvers shall include sufficient training for mediating or arbitrating
41 disputes in a common interest community, requirements for knowledge
42 of community association issues and any other requirements necessary
43 to provide such services

44 c. With respect to a qualified dispute in connection with which the
45 association is a party, reasonable filing fees may be charged by an
46 association for dispute resolution; provided, however, that such fees

1 shall not exceed \$75 for each party, which shall be refundable to a
2 party found to be the prevailing party. With respect to a qualified
3 dispute in which the association is not a party to the dispute, all fees
4 charged for alternative dispute resolution shall be borne by the owners
5 who are parties to the dispute.

6 d. The alternative dispute resolution procedure hereby established
7 shall be initiated and processed as follows:

8 (1) Upon the written request of any owner for resolution of a
9 qualified dispute between the owner and the association, or between
10 owners, the association shall provide dispute resolution in accordance
11 with the terms of this section, the procedural rules of the Department
12 of Community Affairs and those rules of the association that are
13 consistent with this section. Within seven days following receipt of
14 notice from an owner for dispute resolution, or prior to commencing
15 suit, the association shall provide the owner with a list of qualified
16 mediator-arbitrators from the list maintained by the Office of the
17 Ombudsman, which list shall be maintained by the Department of
18 Community Affairs and made promptly available upon request. If any
19 owner who is a necessary party to a dispute resolution fails to respond
20 in writing, within 14 days following the posting in the United States
21 mails, postage prepaid, of the association's notice offering dispute
22 resolution and requesting a response within such time period, which
23 notice was addressed to the owner at the address of record in the
24 business office of the association and at any other address that the
25 owner may have provided in writing for alternative or emergency
26 notification, the owner shall be deemed to have waived the right to
27 participate in dispute resolution and the association shall have no
28 further obligation under this section.

29 (2) If more than one owner is a party to a qualified dispute and all
30 such owners cannot agree upon the identity of the dispute resolver, the
31 association shall choose from among any of the dispute resolvers
32 selected by any of the owners.

33 (3) Upon selection of a dispute resolver, the association shall notify
34 the dispute resolver so selected, who shall schedule the
35 mediation-arbitration procedure within 30 days of the dispute
36 resolver's selection.

37 (4) Dispute resolution shall commence with mediation. If the
38 mediation results in an agreement between the parties to the dispute,
39 the agreement shall be set forth in writing and executed by the parties,
40 and may then be enforced in the Superior Court in the same manner as
41 a binding arbitration award.

42 (5) If the dispute is not resolved by a written agreement executed
43 by all parties to the dispute, the alternative dispute resolution
44 procedure shall proceed to binding arbitration if all parties so agree in
45 writing. If all parties do not agree in writing that the arbitration shall
46 be binding, then the dispute shall proceed to non-binding arbitration.

1 When all parties have agreed to binding arbitration, it shall be deemed
2 to be an election of remedies and no party to the dispute may
3 commence litigation with regard to the subject matter of the dispute,
4 except as permitted by N.J.S.2A:24-1 et seq.

5 (6) Each party to arbitration shall have the right to introduce
6 evidence and testimony concerning their position, cross-examine
7 witnesses for the opposing party and present written legal arguments
8 in support of their position.

9 (7) The dispute resolver shall advise the parties, prior to the
10 commencement of the dispute resolution procedure, whether the
11 parties will immediately proceed to arbitration if mediation is
12 unsuccessful, or whether a separate proceeding will be established for
13 arbitration if the mediation fails to produce a written agreement. If the
14 dispute resolver advises the parties that mediation and arbitration are
15 to be separate proceedings, and the parties do not reach a written
16 agreement during the mediation phase, the dispute resolver shall
17 schedule the arbitration hearing to occur within 30 days of the
18 conclusion of mediation. Each party to the arbitration shall have the
19 right to request one adjournment of the hearing date, provided the
20 adjournment request is made within 10 days of the date of the dispute
21 resolver's notice establishing the date of the hearing. In case of an
22 emergency, and upon good cause shown, the dispute resolver may
23 honor a request for an adjournment that is made more than 10 days
24 after the dispute resolver's notice. Upon a request for an adjournment,
25 the dispute resolver shall reschedule the hearing within 14 days of the
26 original hearing date unless (a) such date would cause a material
27 hardship to one or more parties, whereupon the dispute resolver shall
28 reschedule arbitration for a date certain in the arbitrator's sole
29 discretion, but such date shall only be more than 30 days after the
30 original date set for the arbitration hearing in the event of material
31 hardship due to sickness, injury or death in the immediate family of a
32 party to the dispute; or (b) the parties mutually consent to an alternate
33 date. If any party fails to comply with the dispute resolver's
34 scheduling of the arbitration, the arbitrator shall enter an award in
35 favor of the non-defaulting party or parties.

36 (8) The dispute resolver shall render a written arbitration award
37 within 14 days following the conclusion of the arbitration hearing. If
38 the arbitrator fails to issue a written award within 14 days, the
39 association shall give notice of such failure to the Department of
40 Community Affairs and to the arbitrator. If the arbitrator fails to issue
41 a written award within a further 16-day period, either party shall have
42 the right to file suit with respect to the subject matter of the
43 arbitration. Nothing herein shall prevent the association from filing a
44 lien with respect to the subject matter of the dispute following the
45 expiration of the 30-day period; provided, however, that the
46 enforcement of any such lien may be stayed by a court having

1 jurisdiction and that, in the event of a ruling by the arbitrator adverse
2 to the association after the end of the 30-day period, the lien shall be
3 discharged by the association at its sole cost and expense.

4 (9) In the event that a dispute is not resolved through mediation,
5 the dispute resolver shall, in the arbitration proceeding, assess costs
6 against the non-prevailing party; provided, however, that the costs
7 assessed shall not exceed \$300, which award of costs shall, in binding
8 and non-binding dispute resolution procedures, be binding.

9 e. The association shall also provide alternative dispute resolution
10 in any dispute between or among unit owners; provided, however, that
11 when the association is not a party to the dispute, such dispute
12 resolution shall be at the sole cost and expense of the parties.

13 f. If emergency relief is required, a motion to stay the alternative
14 dispute proceedings may be filed in the Superior Court. The motion
15 shall be accompanied by a verified petition alleging facts that, if
16 proven, would support entry of a temporary injunction, and if an
17 appropriate motion and supporting papers are filed, the alternative
18 dispute resolution proceedings shall be stayed pending a court hearing
19 and disposition of a motion for temporary injunction.

20 g. An owner may file a claim with a court of competent jurisdiction
21 with regard to any matter that would constitute a qualified dispute;
22 provided, however, that (1) any such court filing shall be deemed an
23 election of remedies and shall bar the owner from any further
24 alternative dispute resolution proceedings; (2) when an owner has
25 initiated a claim with a court of competent jurisdiction after having
26 been advised by the association of the right to participate in alternative
27 dispute resolution proceedings, nothing herein shall prohibit the
28 association from immediately filing a notice of fine or revoking or
29 suspending the owner's privileges, if otherwise permitted by law and
30 by the governing documents and subject to the authority of the court
31 to stay any such action; and (3) where an owner has, in accordance
32 with paragraph (5) of subsection d. of this section, elected to
33 participate in binding arbitration, the owner shall not be permitted to
34 file a claim with a court of competent jurisdiction except as provided
35 in paragraph (5) of subsection d of this section. No claim may be filed
36 by an owner while alternative dispute resolution proceedings are
37 ongoing pursuant to P.L. , c. (C.) (pending before the
38 Legislature as this bill), unless such proceedings have been abated
39 pursuant to subsection f. of this section. No application for alternative
40 dispute resolution shall be filed with regard to any matter pending
41 before a court of competent jurisdiction, except upon the order of the
42 court.

43 h. The department, upon a finding that an association has failed to
44 offer or provide alternative dispute resolution in accordance with
45 P.L. , c. (C.) (pending before the Legislature as this bill) and
46 the procedural rules promulgated pursuant thereto, shall provide such

1 dispute resolution, in which case any filing fees charged in accordance
2 with paragraph (3) of subsection b. of this section shall be payable to
3 the department. The department may, in its sole discretion, notify the
4 association of such failure and shall provide it with not less than seven,
5 or more than 14 days in which to comply with the requirements of
6 P.L. , c. (C.) (pending before the Legislature as this bill). If,
7 thereafter, the association fails to proceed with alternative dispute
8 resolution proceedings in accordance with P.L. , c. (C.) (pending
9 before the Legislature as this bill) and the procedural rules
10 promulgated thereunder, the department shall provide the alternative
11 dispute resolution proceedings. Any alternative dispute resolution
12 provided by the association that is not consistent with this section shall
13 be of no force or effect. In carrying out its responsibilities under this
14 section, the department shall refer the dispute to the Office of the
15 Ombudsman, which shall utilize the Office of Dispute Settlement in the
16 Office of the Public Defender to provide alternative dispute resolution
17 services in accordance with this section and the procedural rules
18 adopted by the commissioner. The department shall reimburse the
19 Office of Dispute Settlement for the cost of providing such services.
20 When the department provides alternative dispute resolution pursuant
21 to this section, the costs shall be paid by the department with funds
22 from the Homeowners' Association Trust Fund established pursuant
23 to section 5 of P.L. , c. (C.) (pending before the Legislature as
24 Assembly bill number 481) and revenue received from filing fees paid
25 pursuant to subsection c. of this section.

26

27 87. (New section) Except for applications for emergent relief,
28 prior to the commencement of any form of construction defects
29 litigation on behalf of an association against a declarant or any
30 members of the executive board appointed by the declarant, the
31 following alternative dispute procedure shall be followed:

32 a. The association shall give written notice to the declarant, by
33 certified mail, return receipt requested, which shall be referred to as
34 the "notice." The notice shall be accompanied by the association's
35 statement of all known causes of action, and its version of the facts
36 involved and copies of any reports or documents supporting the
37 association's claim.

38 b. Within 30 days of the receipt of the notice from the association,
39 the declarant or its agent may send a written request to investigate the
40 association's claim, which shall be referred to as the "declarant's
41 reply." The declarant's reply shall include a stipulation by the
42 declarant that all statutes of limitation applicable to any claim by the
43 association against the declarant shall be tolled for 180 days or such
44 shorter period of time as set forth in the cancellation notice delivered
45 pursuant to subsection c. of this section. The tolling of the statutes of
46 limitation shall be effective as of the date of the declarant's reply. If

1 the declarant fails to send the declarant's reply within 30 days or fails
2 to stipulate to the required tolling of all applicable statutes of
3 limitation, then the association may institute an action without
4 satisfying any other condition of this section.

5 c. Upon receipt of the declarant's reply, the association shall, to the
6 extent practicable, make available for inspection and testing by
7 declarant or its agents, all common areas, interiors of applicable
8 individual units and the documents identified in the notice. All
9 inspections and testing, including testing that may cause physical
10 damage to the subject property, shall be at declarant's sole cost and
11 expense, shall be performed during the business week unless the
12 association and declarant agree otherwise, and shall be completed
13 within 60 days from the date of the declarant's reply. The declarant
14 may conduct destructive testing if the association has conducted prior
15 destructive testing related to the defects specified in the association's
16 notice or the parties mutually agree to destructive testing. "Destructive
17 testing" shall mean any act causing substantial physical change in the
18 condition of the premises which would necessitate a repair to restore
19 the premises to the condition that existed prior to the testing. The
20 testing shall be performed to determine the existence, type, extent, or
21 cause of a defect in the design or construction of the development.
22 Acts of repair or maintenance by the association shall not constitute
23 destructive testing. Upon completion of any testing, declarant shall
24 restore the property to the condition that existed immediately prior to
25 the testing.

26 d. Within 60 days after completion of its inspections and testing, the
27 declarant shall submit a written statement to the association setting
28 forth declarant's proposed settlement of the claim, which shall be
29 referred to as the "settlement offer." If the declarant does not deliver
30 the settlement offer within the 60-day period, the association may
31 institute an action without satisfying any other condition of this
32 section.

33 e. Within 30 days of receipt of the settlement offer, the association
34 shall notify the declarant of two business dates during the 45-day
35 period following the date of the association's notice, the first of which
36 will not be earlier than 10 days following the date of the association's
37 notice, on which a majority of the executive board will be prepared to
38 meet with the declarant to discuss the association's claims and the
39 settlement offer. The association and the declarant may be represented
40 at the meeting by attorneys and independent consultants.

41 f. If no settlement of the association's claim, or any part thereof, has
42 been agreed upon, then either the association or the declarant may
43 deliver a written demand within 15 days from the date of the meeting
44 held pursuant to subsection e. of this section for arbitration of the
45 association's claims. The party filing the demand for arbitration shall
46 be responsible for paying any filing fees or escrow deposits related

1 thereto. The arbitration shall be undertaken by and in accordance with
2 the Commercial Arbitration Rules of the American Arbitration
3 Association then in effect, unless the declarant and the association
4 agree to another form of alternative dispute resolution in lieu of the
5 provisions of this subsection. The arbitration shall be non-binding.
6 Arbitration hearings shall be conducted in the county in which the
7 property is located unless the parties agree otherwise. The declarant
8 and the association shall be responsible for their own costs in
9 connection with presenting their respective cases. The cost of the
10 arbitrator shall be equally shared by the parties unless the arbitrator
11 determines otherwise. If neither the declarant nor the association
12 delivers a written demand for arbitration as provided herein,
13 compliance with the terms of this subsection shall not be a
14 precondition to the association's institution of litigation.

15 g. At any time subsequent to the tolling of the statute of limitations,
16 as set forth in the declarant's reply, the declarant may give written
17 notice terminating the tolling of the statute of limitations. Upon
18 delivery of the termination notice, the association shall be relieved of
19 its obligation to arbitrate under subsection f. of this section, but,
20 provided declarant has satisfied its obligations under subsections b.
21 and d. of this subsection, the association shall be required to satisfy its
22 obligations under subsections h. and i. of this section. The tolling of
23 any applicable statutes of limitation shall terminate 180 days following
24 the commencement of the tolling, unless extended by mutual written
25 agreement.

26 h. If the association does not accept the declarant's settlement offer,
27 or if either the association or the declarant does not accept the
28 arbitrator's determination, then the association may commence any
29 legal action the association deems appropriate, provided that prior to
30 the filing of any complaint commencing a legal action against the
31 declarant, a majority of the association's non-declarant members
32 present, in person or by proxy at a meeting of the association where
33 a quorum is present, shall approve the commencement of a lawsuit.
34 The quorum for a meeting of the members of the association for the
35 purposes set forth in this subsection shall be 33 percent of all members
36 of the association qualified to vote, unless the declaration or bylaws
37 shall provide for a lesser quorum requirement. For purposes of
38 determining a quorum, membership interests allocated to declarant
39 units will not be considered in determining a quorum.

40 i. The executive board shall, at least 10 days prior to the meeting
41 referenced in subsection h. of this section, distribute to each member
42 of the association the following written materials:

43 (1) a statement of the association's claim against the declarant,
44 specifying all construction defects and other claims which comprise the
45 cause of action;

46 (2) a copy of the settlement offer and any other written responses

1 to the claim provided by the declarant;

2 (3) if the declarant and association participated in an arbitration
3 procedure pursuant to subsection f. of this section, a copy of the
4 arbitrator's findings along with the association's and declarant's
5 response to such findings, if any;

6 (4) a statement that the recovery of damages through litigation may
7 not result in the receipt of sufficient funds to pay all damages or repair
8 costs as estimated by the association's experts;

9 (5) an estimate of the minimum and maximum costs to the
10 association to prosecute the litigation and a statement that such costs
11 may not be recovered in the litigation;

12 (6) a description of the agreement with the attorney whom the
13 association contemplates retaining to prosecute the litigation; and

14 (7) such other information as the association deems appropriate or
15 as the declarant may have provided to the association in connection
16 with its distribution to its members.

17 j. All written materials provided to the association's members will
18 be privileged communications, unless the association agrees otherwise,
19 and shall not be admissible in evidence in any action unless such
20 materials would, notwithstanding their distribution to the association's
21 members, otherwise be admissible but for their distribution to the
22 association's members.

23 k. If the association fails to comply with any of the provisions of
24 this section, such failure may be asserted by declarant as a procedural
25 deficiency. Upon a judicial determination that the association failed to
26 comply with the provisions set forth in this section, the association's
27 complaint shall be stayed for an appropriate period of time to permit
28 the association to cure any non-compliance.

29 l. Neither the failure to state a particular cause of action in the
30 notice provided for in subsection a. of this section nor the failure to
31 state a particular claim under paragraph (1) of subsection i. of this
32 section shall be deemed a procedural deficiency, nor prevent the
33 association from stating such other causes of action as it deems
34 necessary or appropriate in connection with any litigation against the
35 declarant.

36

37 88. (New section) a. During the period of declarant control after
38 the initial election of unit owner board members other than the
39 declarant, the executive board of the association may, upon the request
40 of any board member, authorize an independent committee of at least
41 five unit owners other than the declarant to evaluate, compromise and
42 enforce by any lawful means as provided in this section any claims
43 involving the common elements or any other improvements in the
44 common interest community which the association is obligated to
45 maintain. Only members of the executive board elected by the unit
46 owners other than the declarant and other unit owners appointed by

1 those independent members shall serve on the committee, and the
2 committee's decisions shall be free of any control by the declarant or
3 any member of the executive board or officer appointed by the
4 declarant. Any vacancies on the committee shall be filled by the
5 independent board members within 30 days, and in the case of any tie
6 votes by such board members, by the vote of the unit owners other
7 than the declarant within 60 days after the vacancy occurs.

8 b. If the committee authorized in subsection a. of this section is
9 established and there has been substantial completion of the common
10 elements and public improvements in any phase of the common interest
11 community which are not covered by the performance or maintenance
12 guarantees posted with any governmental agencies having jurisdiction,
13 the committee shall, at the declarant's request, cause such common
14 elements and improvements to be inspected and evaluated for
15 compliance with the declarant's warranty and construction obligations,
16 with the assistance of qualified independent engineering and legal
17 consultants selected by the committee. The fees for such consultants
18 shall be paid from funds contributed at closing for such purposes by
19 unit owners other than the declarant or by regular or special common
20 expense assessments, or by both; provided, however, that the declarant
21 shall have the option to supplement such funds to the extent that it
22 deems appropriate.

23 c. Public improvements to be dedicated to any governmental entity
24 shall be exempt from any direct warranty or construction defect claims
25 by the association or the unit owners other than the declarant.
26 Acceptance of any such public improvements by the governmental
27 entity to which they are to be dedicated shall be deemed conclusive
28 evidence that such improvements have been satisfactorily completed
29 and the declarant shall have no further obligation with respect to same
30 to the association, to any unit owners other than the declarant, or to
31 any governmental agency having jurisdiction.

32 d. Within 120 days after the association's receipt of any request for
33 inspection of any phase of the completed common elements or other
34 improvements, the committee shall cause its engineering consultant to
35 inspect the particular completed improvements and render a written
36 evaluation of same to the committee. A copy of the final report,
37 following the committee's review of the initial evaluation, shall be
38 furnished to the declarant within 30 days after the committee's receipt
39 of the report. Thereafter, the committee, or its designated
40 representatives, and the declarant shall conduct one or more joint
41 inspections of the common elements and other improvements covered
42 by the declarant's request and pursue good faith negotiations to
43 resolve any warranty or construction defect claims against the
44 declarant. All fees and related expenses incurred by the committee for
45 engineering and legal consultants shall be paid promptly by the
46 association from available designated funds upon receipt of the

1 committee's written authorization to make such payments.

2 e. If a settlement agreement is finalized between the committee and
3 the declarant, the declarant controlled executive board shall have the
4 authority to execute such an agreement and to release the declarant
5 from all liability with respect to the completed common elements and
6 improvements, subject to such terms and conditions as may be
7 acceptable to the committee. Any such settlement agreement and
8 release shall be legally binding upon the association and the unit
9 owners, provided that its form is approved by the independent legal
10 counsel retained by the committee on behalf of the association.

11 f. If no settlement agreement is approved by the committee within
12 180 days after the committee's receipt of the declarant's request for
13 inspection, the parties shall be obligated to proceed to mediation
14 within 30 days thereafter in accordance with the rules of the American
15 Arbitration Association. If no settlement is reached through mediation
16 within 15 days after commencement of same, then the parties shall
17 promptly proceed to non-binding arbitration of any remaining issues
18 in accordance with the rules of the American Arbitration Association,
19 and such mediation and non-binding arbitration shall be conditions
20 precedent to any litigation of the warranty and construction defect
21 claims against the declarant, which shall also require the approval of
22 a majority of the unit owners other than the declarant. All professional
23 fees and expenses reasonably incurred by the association with regard
24 to the mediation or arbitration, or both, shall be borne by the
25 non-declarant unit owners and paid by the association promptly upon
26 the receipt of written authorization of the committee.

27 g. In the event that no settlement agreement and releases are
28 executed with respect to any phase of completed common elements or
29 improvements during the period of declarant control of the executive
30 board of the association, any statutes of limitation or repose applicable
31 to such phase shall be extended for a period of one year after the
32 assumption of control of the executive board by unit owners other than
33 the declarant. In addition, the declarant controlled board shall not be
34 obligated to commence suit for any such claims during its period of
35 control.

36 h. The procedures set forth in this section shall also apply to and
37 be binding upon the declarant and the association after the unit
38 owners, other than the declarant, assume control of the executive
39 board of the association; provided, however, that the independent unit
40 owner controlled executive board of the association shall not be bound
41 by the recommendations of the committee.

42

43

ARTICLE 5

44

STATE OVERSIGHT OF ASSOCIATIONS

45

46 89. (New section) The Commissioner of Community Affairs shall

1 have the following powers with regard to associations:

2 a. To initiate, receive, hear and review complaints, hold hearings
3 and take such other enforcement actions as may be necessary with
4 regard to any of the following matters:

5 (1) furnishing of information concerning records required to be
6 maintained by the association and to be made available to unit owners;

7 (2) conduct of fair elections for association executive board
8 members and officers and fair voting on other matters;

9 (3) establishment and implementation of a fair and efficient
10 procedure for the resolution of disputes between associations and unit
11 owners and among unit owners;

12 (4) holding of meetings that are open to unit owners and the
13 conducting of association business in such open meetings, except as
14 otherwise expressly permitted by statute;

15 (5) enforcement of conflict of interest provisions of section 72 of
16 P.L. , c. (C.) (pending before the Legislature as this bill) on the
17 part of association trustees, officers and employees; and

18 (6) enforcement of standards of due process and open governance.

19 b. To issue subpoenas for the production of documents and the
20 attendance of witnesses with respect to the investigation of any
21 complaint.

22 c. To forward to the appropriate law enforcement officials any
23 information that may indicate violation of any criminal statute.

24 d. To render advisory opinions as to whether a given state of facts
25 or circumstances or action would constitute a violation of any statute
26 or rule applicable to associations.

27 e. To enforce all statutes and rules imposing any duty upon
28 associations.

29 f. (1) If the department determines, after notice, that an
30 association, or a past or current officer or executive board member of
31 an association, has: (a) violated any provision of P.L. , c. (C.)
32 (pending before the Legislature as this bill), the "Condominium Act,"
33 P.L.1969, c.257 (C.46:8B-1 et seq.), "The Planned Real Estate
34 Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et
35 seq.), or any other statute regulating associations; (b) directly or
36 through an agent or employee knowingly engaged in any violation of
37 the governing documents of the association; or (c) violated any lawful
38 order or rule of the department; the department may issue and enforce
39 an order requiring the association or past or present executive board
40 member or officer to cease and desist from the unlawful practice or to
41 take such other affirmative action as in the judgment of the department
42 will carry out the purposes of P.L. , c. (C.) (pending before the
43 Legislature as this bill).

44 In the event the department has reason to believe that any person
45 subject to licensing by any agency of State government has knowingly
46 engaged in any unlawful practice in connection with the operation of

1 an association, the department shall refer the matter to the agency
2 having licensing jurisdiction over such person.

3 If the department makes a finding of fact in writing that the public
4 interest will be irreparably harmed by delay in issuing an order, it may
5 issue a temporary cease and desist order. Every temporary cease and
6 desist order shall include in its terms a provision that upon request a
7 hearing shall be held within 10 days of such request to determine
8 whether or not it becomes permanent. Such temporary cease and desist
9 order shall be forwarded by certified mail.

10 (2) The department shall provide an opportunity for a hearing for
11 any association, or for any current or former executive board member
12 or officer, prior to the imposition of any sanction, including monetary
13 fines. Associations shall be subject to fines only after they have failed
14 or refused to comply with an order of the department. The maximum
15 fine that may be levied against an association or former executive
16 board member or officer for failure to comply with an order to cease
17 and desist from continuing to violate an order of the department shall
18 be \$1,000 per order. Former executive board members or officers
19 shall be not be subject to fines for violations that occurred while they
20 held board membership or office. All fines or penalties levied by the
21 department shall be collected in accordance with the "Penalty
22 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

23 g. To remove from office, after notice and the opportunity for a
24 hearing, any executive board member or officer who shall fail to
25 comply with any order issued by the commissioner to cease and desist
26 from violating any statute or rule. Following any such removal, the
27 commissioner shall provide such assistance as may be required by an
28 association in scheduling and holding elections or in managing the
29 association until such time as the executive board is able to function
30 properly. Notice of any fine imposed upon the association or a former
31 board member or of the removal of an executive board member or
32 officer by the commissioner shall be given to all unit owners by the
33 executive board within 30 days of the action and shall be entered upon
34 the minutes of the next meeting of the executive board or of the
35 association. Current executive board members and officers shall not be
36 subject to the imposition of a personal monetary fine or penalty under
37 this subsection, other than for failure or refusal to comply with an
38 order of removal from office.

39 h. To select, assign and provide trained and impartial volunteer
40 dispute resolvers for the purpose of resolving disputes in conjunction
41 with the Office of Dispute Settlement in accordance with section 28 of
42 P.L.1994, c.58 (C.52:27E-73).

43 i. To employ or contract, in conjunction with the Office of Dispute
44 Settlement, with persons who are professionally trained in dispute
45 resolution, as mediators and as arbitrators, and to establish ethical and
46 professional standards for such persons.

1 90. (New section) a. On or before the first day of the fourth month
2 next following the effective date of P.L. , c. (C.) (pending before
3 the Legislature as this bill), and annually on the same date thereafter,
4 all homeowners associations having three or more units shall register
5 with the Commissioner of Community Affairs, on such form as the
6 commissioner shall prescribe, which form shall include, but not be
7 limited to, information concerning the names and addresses of the
8 officers and members of the executive board, and shall pay an annual
9 registration fee, which shall be as follows: for an association having
10 between three and 10 units, \$25.00; for an association having between
11 11 and 50 units, \$25.00 plus \$.65 per unit after the first 10 units; for
12 an association having from 51 to 100 units, \$51.00 plus \$.55 per unit
13 after the first 50 units; for an association having from 101 to 250 units,
14 \$78.50 plus \$.45 per unit after the first 100 units; for an association
15 having from 251 to 500 units, \$146.00 plus \$.35 per unit after the first
16 250 units, for an association having from 501 to 1,000 units, \$233.50
17 plus \$.25 per unit after the first 500 units; and for an association
18 having more than 1,000 units, \$358.50 plus \$.15 per unit after the first
19 1,000 units; provided, however, that the fee may be adjusted annually
20 in proportion to the percent change in the Consumer Price Index since
21 the adoption or last revision, as the case may be, of the fee schedule.
22 For the purpose of this subsection, "Consumer price index" means the
23 Consumer Price Index for All Urban Consumers, New York-Northern
24 New Jersey-Long Island Metropolitan Area, All Items (1982-84=100),
25 as published by the Bureau of Labor Statistics in the United States
26 Department of Labor. An increase to the fee shall be made only if the
27 percent change in the consumer price index for the previous calendar
28 year is greater than zero. The fee shall be calculated so as to produce
29 sufficient revenue to reasonably cover the cost to the Department of
30 Community Affairs of enforcing P.L. , c. (C.) (pending before
31 the Legislature as this bill) and the cost of providing training and
32 dispute resolution services required under section 86 of P.L. , c.
33 (C.) (pending before the Legislature as this bill). The department
34 shall reduce the fee to be charged in any succeeding year if the
35 currently available and projected annual revenues will exceed the
36 anticipated annual costs by 15 percent. The department shall certify
37 annually to the State Treasurer whether or not a fee reduction is
38 required to be made. Associations shall report the fee in their financial
39 documents separate from any other assessment. Associations formed
40 subsequent to the effective date of P.L. , c. (C.) (pending before the
41 Legislature as this bill) shall register within 30 days of the formation
42 of the association; provided, however, that any association formed for
43 a planned real estate development required to be registered with the
44 department shall be registered not later than the date of registration of
45 the planned real estate development. Any fee not paid in full by the
46 date due shall be subject to penalty charges in the amount of one and

1 one-half percent per month, or portion thereof, on the unpaid balance,
2 to be collected, along with the amount of the unpaid fee, in accordance
3 with the "Penalty Enforcement Law of 1999," P.L. 1999, c.274
4 (C.2A:58-10 et seq.). An association that has not paid in full all
5 outstanding fees, together with any penalty thereon, shall not have the
6 authority, notwithstanding any other law to the contrary, to impose
7 fines, record liens or restrict privileges until the balance is paid in full.

8 b. All registration fees and penalty monies received by the
9 Department of Community Affairs pursuant to this section shall be
10 deposited in an interest-bearing, non-lapsing revolving fund, entitled
11 the "Homeowners' Association Trust Fund," to be held by the State
12 Treasurer. Moneys held in this non-lapsing revolving fund shall be
13 continuously appropriated to the Department of Community Affairs
14 and to the Department of Treasury, Office of the Public Defender,
15 Office of Dispute Settlement for the purposes expressed in P.L. , c.
16 (C.) (pending before the Legislature as this bill) and shall be
17 dedicated solely for those purposes. In the event funds are
18 appropriated or transferred from this fund for any other purpose in
19 contradiction of this section, then the obligation of associations to pay
20 the annual registration fee pursuant to this section shall be suspended
21 until such time as the full amount of the funds transferred or
22 appropriated is reinstated to the fund, and all costs which cannot be
23 paid from the fund due to insufficiencies thereafter shall be paid from
24 the General Fund. Any claims of transfers made outside of the
25 purposes of this section may be submitted to the Joint Budget
26 Oversight Committee, or its successor committee.

27
28 91. (New section) The Department of Community Affairs shall
29 prepare and publish a booklet, which shall be made available at cost to
30 the general public, to associations and to unit owners in common
31 interest communities to serve as a general guide to community
32 associations. The booklet shall be distributed by the association to
33 each unit owner free of charge initially, and at cost as required for
34 distribution to purchasers; it shall be the duty of each selling unit
35 owner to provide a copy of the booklet to a purchaser of the unit at or
36 before the time of signing of the sales contract. The booklet shall
37 include at least the following:

38 a. An explanation of the nature of home ownership in a planned real
39 estate development and a glossary of relevant terms, including, but not
40 limited to, "master declaration," "bylaws," "master deed," "covenants
41 and restrictions," and "common elements";

42 b. A description of the rights and responsibilities of unit owners,
43 including reference to applicable statutes and rules;

44 c. A description of the duties and powers of, and restrictions on,
45 executive boards, including reference to applicable statutes and rules.
46 The booklet shall include information concerning conflict of interest

1 requirements applicable to executive board members and officers and
2 to professionals hired by associations and shall also include reference
3 to any other sources of information that may be recommended by the
4 commissioner as being of assistance to executive board members and
5 officers in the discharge of their duties and to the public and
6 professional bodies having authority to investigate allegations of
7 statutory or rule violations by board members and officers or by
8 managers, attorneys, accountants, or other professionals;

9 d. A description of the statutory and regulatory requirements for
10 association bylaws or rules and such other material as the
11 commissioner shall deem useful; and

12 e. A listing of documents and other information that a potential
13 purchaser of a unit in a planned real estate development should obtain
14 before entering into a contract to purchase a unit, including, but not
15 limited to: copies of the association's governing documents; a copy of
16 the latest capital reserve study, if any, showing the condition, life
17 expectancy and replacement costs of major mechanical systems and
18 other common elements; any litigation pending against the association;
19 any pending notices or orders issued by the Department of Community
20 Affairs or any other governmental entity; the association's procedures
21 for alternate dispute resolution, adopting rules and regulations,
22 providing access to records, approval of budgets, and review of unit
23 owners' applications to do work on their units; delinquency and
24 foreclosure rates; the association's insurance coverages; and
25 governmental and non-governmental remedies available in the event of
26 violation of the rights of unit owners. These documents and this
27 information shall be made available to prospective purchasers upon
28 written request and copies shall be provided, for a charge not
29 exceeding the reasonable cost of copying or printing, to any person
30 who has contracted to purchase a unit within the jurisdiction of the
31 association.

32

33 92. (New section) There is hereby established the Office of the
34 Ombudsman for Homeowners and Associations, which, for purposes
35 of separation from activities related to the enforcement powers
36 granted to the commissioner, shall be separate and apart from any
37 other unit charged with carrying out such enforcement activities. The
38 office shall be headed by the ombudsman, who shall be a person
39 qualified by experience in the areas of planned real estate
40 developments and dispute resolution. No person who shall have been
41 a unit owner or an employee of, or provider of professional or business
42 services to, any association or organization representing associations
43 within the preceding 36-month period shall be eligible for appointment
44 as ombudsman. The ombudsman shall have the following duties and
45 functions:

46 a. To develop and maintain, in consultation with the Office of

1 Dispute Settlement and section 28 of P.L.1994, c.58 (C.52:27E-73),
2 a pool and list of volunteers throughout the State who have been
3 trained in dispute resolution and to establish procedures and a system
4 of training for such volunteers;

5 b. To obtain and compile information concerning alternative dispute
6 resolution proceedings throughout the State that may serve as a
7 resource on the methods used to resolve disputes, for the benefit of
8 associations, unit owners and volunteer dispute resolvers;

9 c. To assist unit owners in understanding their rights and
10 responsibilities and the remedies available to them;

11 d. To assist executive board members and officers of associations
12 in receiving appropriate training to allow them to properly discharge
13 their functions and duties. This assistance shall include listings of
14 appropriate reference and educational materials and general budgetary
15 and financial guidance;

16 e. To conduct dispute resolution workshops for executive board
17 members and unit owners; and

18 f. To assist associations in their dealings with municipalities and
19 with other State and local regulatory agencies.

20

21 93. (New section) The commissioner shall review any complaints
22 received from unit owners' associations concerning noncompliance
23 with the provisions of P.L.1989, c.299 (C.40:67-23.2 et seq.). Upon
24 a finding that a municipality is not in compliance with that act, the
25 commissioner, through the Director of the Division of Local
26 Government Services, shall provide appropriate direction to the
27 municipality and, in the event of continued noncompliance, shall take
28 such corrective action as may be appropriate, including denial of
29 budget certification or withholding of State aid. A municipality
30 aggrieved by an order of the commissioner or of the director pursuant
31 to this section shall be entitled to a hearing in accordance with the
32 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
33 seq.).

34

35 94. (New section) The commissioner shall have authority to adopt
36 such rules as may be necessary to enforce the provisions of P.L. ,
37 c. (C.) (pending before the Legislature as this bill), pursuant
38 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
39 et seq.), provided the commissioner shall not adopt rules creating
40 substantive rights or obligations other than as set forth in P.L. , c.
41 (C.) (pending before the Legislature as this bill).

42

43 95. (New section) It is the intent of the Legislature that the
44 provisions of P.L. , c. (C.) (pending before the Legislature
45 as this bill) shall supplement the provisions of the "Horizontal Property
46 Act," P.L.1963, c.168, (C.46:8A-1 et seq.), the "Condominium Act,"

1 P.L.1969, c.257 (C.46:8B-1 et seq.), and all supplements to that act,
2 as well as the provisions of P.L.1993, c.30 (C.45:22A-43 et seq.)
3 concerning associations; provided, however, that whenever any
4 conflict or apparent conflict may be read between the provisions of
5 P.L. , c. (C.) (pending before the Legislature as this bill) and the
6 provisions of those acts, the provisions of P.L. , c. (C.) (pending
7 before the Legislature as this bill) shall supersede those acts and be
8 deemed to be the controlling law.

9

10 96. Section 1 of P.L.1989, c.299 (C.40:67-23.2) is amended to
11 read as follows:

12 1. For the purposes of [this act] P.L.1989, c.299 (C.40:67-23.2 et
13 seq.):

14 a. "Condominium" means the form of real property ownership
15 provided for under the "Condominium Act," P.L.1969, c.257
16 (C.46:8B-1 et seq.) or any law subsequently enacted providing for
17 such a form of ownership;

18 b. "Cooperative" means a housing corporation or association
19 wherein the holder of a share or membership interest in the
20 corporation or association is entitled to possess and occupy, for
21 dwelling purposes, a house, apartment, or other unit of housing owned
22 by the corporation or association, or to purchase a unit of housing
23 constructed or erected by the corporation or association;

24 c. "Fee simple community" means a private community which
25 consists of individually owned lots or units and provides for common
26 or shared elements or interests in real property;

27 d. "Horizontal property regime" means the form of real property
28 ownership provided for under the "Horizontal Property Act,"
29 P.L.1963, c.168 (C.46:8A-1 et seq.) or any law subsequently enacted
30 which provides for such a form of ownership;

31 e. "Qualified private community" means a residential condominium,
32 cooperative, fee simple community, [or] horizontal property regime,
33 or a common interest community as defined pursuant to section 3 of
34 P.L. , c. (C.) (now pending before the Legislature as this bill), the
35 residents of which do not receive any tax abatement or tax exemption
36 related to its construction, comprised of a community trust or other
37 trust device, condominium association, homeowners' association, or
38 council of co-owners, wherein the cost of maintaining roads and
39 streets and providing essential services is paid for by [a not-for-profit
40 entity consisting exclusively of unit owners within the community] a
41 unit owners' association as defined pursuant to section 3 of P.L. , c.
42 (C.) (pending before the Legislature as this bill). No apartment
43 building or garden apartment complex owned by an individual or entity
44 that receives monthly rental payments from tenants who occupy the
45 premises shall be considered a qualified private community. No
46 "proprietary campground facility," as defined in section 1 of P.L.1993,

1 c.258 (C.45:22A-49), shall be considered to be a qualified private
2 community.

3 (cf: P.L.1993, c.258, s.10)

4

5 97. Section 3 of P.L.1977, c.419 (C.45:22A-23) is amended to
6 read as follows:

7 3. As used in [this act] P.L.1977, c.419 (C.45:22A-1 et seq.)
8 unless the context clearly indicates otherwise:

9 a. "Disposition" means any sales, contract, lease, assignment, or
10 other transaction concerning a planned real estate development.

11 b. "Developer" or "subdivider" means any person who disposes or
12 offers to dispose of any lot, parcel, unit, or interest in a planned real
13 estate development.

14 c. "Offer" means any inducement, solicitation, advertisement, or
15 attempt to encourage a person to acquire a unit, parcel, lot, or interest
16 in a planned real estate development.

17 d. "Purchaser" or "owner" means any person or persons who
18 acquires a legal or equitable interest in a unit, lot, or parcel in a
19 planned real estate development, and shall be deemed to include a
20 prospective purchaser or owner.

21 e. "State" means the State of New Jersey.

22 f. "Commissioner" means the Commissioner of Community Affairs.

23 g. "Person" shall be defined as in R.S.1:1-2.

24 h. "Planned real estate development" or "development" means any
25 real property situated within the State, whether contiguous or not,
26 which consists of or will consist of, separately owned areas,
27 irrespective of form, be it lots, parcels, units, or interest, and which are
28 offered or disposed of pursuant to a common promotional plan, and
29 providing for common or shared elements or interests in real property.
30 This definition shall specifically include, but shall not be limited to,
31 property subject at any time to the "Condominium Act," P.L.1969,
32 c.257 (C.46:8B-1 et seq.), any form of homeowners' association, any
33 housing cooperative [or to]_, any community trust or other trust
34 device, or any property subject to the "New Jersey Uniform Common
35 Interest Ownership Act," P.L. .c. (C. _____) (pending before the
36 Legislature as this bill).

37 This definition shall be construed liberally to effectuate the
38 purposes of [this act] P.L.1977, c.419 (C.45:22A-1 et seq.).

39 i. "Common promotional plan" means any offer for the disposition
40 of lots, parcels, units or interests of real property by a single person or
41 group of persons acting in concert, where such lots, parcels, units or
42 interests are contiguous, or are known, designated or advertised as a
43 common entity or by a common name.

44 j. "Advertising" means and includes the publication or causing to
45 be published of any information offering for disposition or for the
46 purpose of causing or inducing any other person to purchase an

1 interest in a planned real estate development, including the land sales
2 contract to be used and any photographs or drawings or artist's
3 representations of physical conditions or facilities on the property
4 existing or to exist by means of any:

- 5 (1) Newspaper or periodical;
- 6 (2) Radio or television broadcast;
- 7 (3) Written or printed or photographic matter;
- 8 (4) Billboards or signs;
- 9 (5) Display of model houses or units;
- 10 (6) Material used in connection with the disposition or offer of the
11 development by radio, television, telephone or any other electronic
12 means; or
- 13 (7) Material used by developers or their agents to induce
14 prospective purchasers to visit the development, particularly vacation
15 certificates which require the holders of such certificates to attend or
16 submit to a sales presentation by a developer or his agents.

17 "Advertising" does not mean and shall not be deemed to include:
18 Stockholder communications such as annual reports and interim
19 financial reports, proxy materials, registration statements, securities
20 prospectuses, applications for listing securities on stock exchanges,
21 and the like; all communications addressed to and relating to the
22 account of any person who has previously executed a contract for the
23 purchase of the subdivider's lands except when directed to the sale of
24 additional lands.

25 k. "Nonbinding reservation agreement" means an agreement
26 between the developer and a purchaser and which may be [cancelled]
27 canceled without penalty by either party upon written notice at any
28 time prior to the formation of a contract for the disposition of any lot,
29 parcel, unit or interest in a planned real estate development.

30 l. "Blanket encumbrance" means a trust deed, mortgage, judgment,
31 or any other lien or encumbrance, including an option or contract to
32 sell or a trust agreement, affecting a development or affecting more
33 than one lot, unit, parcel, or interest therein, but does not include any
34 lien or other encumbrance arising as the result of the imposition of any
35 tax assessment by any public authority.

36 m. "Conversion" means any change with respect to a real estate
37 development or subdivision, apartment complex or other entity
38 concerned with the ownership, use or management of real property
39 which would make such entity a planned real estate development.

40 n. "Association" means an association organized for the
41 management of common elements and facilities [, organized pursuant
42 to section 1 of P.L.1993, c.30 (C.45:22A-43)].

43 o. "Executive board" means the [executive board of an association,
44 as provided for in section 3 of P.L.1993, c.30 (C.45:22A-45)] body,
45 regardless of name, designated in the declaration to act on behalf of
46 the association.

1 p. "Unit" means any lot, parcel, unit or interest in a planned real
2 estate development that is, or is intended to be, a separately owned
3 area thereof.

4 q. "Declarant" means any person or group of persons acting in
5 concert who (1) as a part of a common promotional plan, offers to
6 dispose of any interest in a unit not previously disposed of, or (2)
7 reserves or succeeds to any special declarant right.

8 (cf: P.L.1993, c.30, s.7)

9
10 98. Section 8 of P.L.1977, c.419 (C.45:22A-28) is amended to
11 read as follows:

12 8. a. A public offering statement shall disclose fully and accurately
13 the characteristics of the development and the lots, parcels, units, or
14 interests therein offered, and shall make known to prospective
15 purchasers all unusual or material circumstances or features affecting
16 the development. The proposed public offering statement submitted to
17 the agency shall be in a form prescribed by its rules and regulations
18 and shall include the following:

19 (1) The name and principal address of the developer;

20 (2) A general narrative description of the development stating the
21 total number of lots, units, parcels, or interests in the offering, and the
22 total number of such interests planned to be sold, leased or otherwise
23 transferred;

24 (3) Copies of any management contract, lease of recreational areas,
25 or similar contract or agreement affecting the use, maintenance, or
26 access of all or any part of the development, with a brief and simple
27 narrative statement of the effect of each such agreement upon a
28 purchaser, and a statement of the relationship, if any, between the
29 developer and the managing agent or firm;

30 (4) (a) The significant terms of any encumbrances, easements, liens,
31 and restrictions, including zoning and other regulations, affecting such
32 lands and each unit, lot, parcel, or interest, and a statement of all
33 existing taxes and existing or proposed special taxes or assessments
34 which affect such lands; and

35 (b) In the case of a conversion subject to the provisions of the
36 "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et
37 al.), the information required pursuant to section 14 of P.L.1991,
38 c.509 (C.2A:18-61.53);

39 (5) (a) Relevant community information, including hospitals, health
40 and recreational facilities of any kind, streets, water supply, levees,
41 drainage control systems, irrigation systems, sewage disposal facilities
42 and customary utilities; and

43 (b) The estimated cost, size, date of completion, and responsibility
44 for construction and maintenance of existing and proposed amenities
45 which are referred to in connection with the offering or disposition of
46 any interest in the subdivision or subdivided lands;

1 (6) A copy of the proposed budget for the operation and
2 maintenance of the common or shared elements or interests;

3 (7) Additional information required by the agency to assure full and
4 fair disclosure to prospective purchasers.

5 (8) If any declaration filed pursuant to P.L. , c. (C.) (pending
6 before the Legislature as this bill) provides that a common interest
7 community is subject to any development rights, the public offering
8 statement shall disclose, subject to the limitations set forth in section
9 47 of P.L. , c. (C.) (pending before the Legislature as this bill) and,
10 in addition to the information required under paragraphs (1) through
11 (7) of this subsection, the following:

12 (a) the maximum number of units, and the maximum number of
13 units per acre, that may be created;

14 (b) a statement of how many or what percentage of the units that
15 may be created will be restricted exclusively to residential use, or a
16 statement that no representations are made regarding use restrictions;

17 (c) if any of the units that may be built within real estate subject to
18 development rights are not to be restricted exclusively to residential
19 use, a statement, with respect to each portion of that real estate, of the
20 maximum percentage of the real estate areas, and the maximum
21 percentage of the floor areas of all units that may be created therein,
22 that are not restricted exclusively to residential use;

23 (d) a brief narrative description of any development rights reserved
24 by a declarant and of any conditions relating to or limitations upon the
25 exercise of development rights;

26 (e) a statement of the maximum extent to which each unit's
27 allocated interests may be changed by the exercise of any development
28 right described in subsection c. of this section;

29 (f) a statement of the extent to which any buildings or other
30 improvements that may be erected pursuant to any development right
31 in any part of the common interest community will be compatible with
32 existing buildings and improvements in the common interest
33 community in terms of architectural style, quality of construction, and
34 size, or a statement that no assurances are made in those regards;

35 (g) general descriptions of all other improvements that may be made
36 and limited common elements that may be created within any part of
37 the common interest community pursuant to any development right
38 reserved by the declarant, or a statement that no assurances are made
39 in that regard;

40 (h) a statement of any limitations as to the locations of any building
41 or other improvement that may be made within any part of the
42 common interest community pursuant to any development right
43 reserved by the declarant, or a statement that no assurances are made
44 in that regard;

45 (i) a statement that any limited common elements created pursuant
46 to any development right reserved by the declarant will be of the same

1 general types and sizes as the limited common elements within other
2 parts of the common interest community, or a statement of the types
3 and sizes planned, or a statement that no assurances are made in that
4 regard;

5 (j) a statement that the proportion of limited common elements to
6 units created pursuant to any development right reserved by the
7 declarant will be approximately equal to the proportion existing within
8 other parts of the common interest community, or a statement of any
9 other assurances in that regard, or a statement that no assurances are
10 made in that regard;

11 (k) a statement that all restrictions in the declaration affecting use,
12 occupancy and alienation of units will apply to units created pursuant
13 to any development right reserved by the declarant, or a statement of
14 any differentiations that may be made as to those units, or a statement
15 that no assurances are made in that regard; and

16 (l) a statement of the extent to which any assurances made pursuant
17 to this section apply or do not apply in the event that any development
18 right is not exercised by the declarant.

19 b. The public offering statement shall not be used for any
20 promotional purposes before registration of the development and
21 afterwards only if it is used in its entirety. No person may advertise or
22 represent that the agency approves or recommends the development
23 or dispositions therein. No portion of the public offering statement
24 may be underscored, italicized, or printed in larger or heavier or
25 different color type than the remainder of the statement, unless the
26 agency requires or permits it.

27 c. The agency may require the developer to alter or amend the
28 proposed public offering statement in order to assure full and fair
29 disclosure to prospective purchasers, and no change in the substance
30 of the promotional plan or plan of disposition or development of a
31 planned real estate development may be made after registration
32 without the approval of the agency. A public offering statement shall
33 not be current unless all amendments have been incorporated.

34 d. The public offering statement shall, to the extent possible,
35 combine simplicity and accuracy of information, in order to facilitate
36 purchaser understanding of the totality of rights, privileges, obligations
37 and restrictions, comprehended under the proposed plan of
38 development. In reviewing such public offering statement, the agency
39 shall pay close attention to the requirements of this subsection, and
40 shall use its discretion to require revision of a public offering statement
41 which is unnecessarily complex, confusing, or is illegible by reason of
42 type size or otherwise.

43 (cf: P.L.1991, c.509, s.22)

44

45 99. Section 28 of P.L. 1994, c. 58 (C.52:27E-73) is amended to
46 read as follows:

1 28. a. The Office of Dispute Settlement may provide, in the
2 discretion of the Public Defender, mediation, and other third party
3 neutral services in the resolution of disputes which involve the public
4 interest and may enter into agreements or contracts to carry out any
5 of the purposes or functions of this section. The Office of Dispute
6 Settlement may assist public or private parties in resolving disputes.
7 The Office of Dispute Settlement is authorized to:

8 (1) Facilitate the resolution of disputes through the provision of
9 mediation and other neutral dispute resolution services;

10 (2) Establish standards for the selection, assignment, and conduct
11 of persons acting on behalf of said office in the resolution of disputes;

12 (3) Conduct educational programs and provide other services
13 designed to reduce the occurrence, magnitude, or cost of disputes;

14 (4) Design, develop, or operate dispute resolution programs, or
15 assist in improving or extending existing dispute resolution programs;

16 (5) Work with the business ombudsman, established by Executive
17 Order No. 15, and take such other action as will promote and facilitate
18 dispute resolution in the State; [and]

19 (6) Coordinate and cooperate with the Office of Administrative
20 Law so as to avoid duplication of effort and to facilitate alternate
21 resolution of disputes that would otherwise require administrative
22 hearings; and

23 (7) Work with the Office of the Ombudsman for Homeowners and
24 Associations, established pursuant to section 92 of P.L. , c. (C.)
25 (pending before the Legislature as this bill), to promote and facilitate
26 dispute resolution for associations in the State and provide training
27 programs pursuant to P.L. , c. (C.) (pending before the Legislature as
28 this bill) free of charge to a volunteer, in exchange for the agreement
29 of the volunteer to offer dispute resolution services free of charge to
30 associations. Costs of training incurred under this paragraph shall be
31 reimbursed from the Homeowners' Association Trust Fund established
32 pursuant to section 90 of P.L. , c. (C.) (pending before the
33 Legislature as this bill).

34 b. The Public Defender may establish reasonable fees to be charged
35 to public or private parties for the provision of the educational,
36 consultation, dispute resolution, or other services authorized herein
37 and may apply for and accept on behalf of the State any federal, local,
38 or private grants, bequests, gifts, or contributions to aid in the
39 financing of any of the programs or activities of the office. The Public
40 Defender in the name of the State shall do all that is necessary and
41 proper to receive or to collect all moneys due to the State, including
42 such fees, grants, bequests, gifts, or contributions, by or
43 reimbursement for services rendered pursuant to this section.

44 (cf: P.L.1994, c.58, s.28)

45
46 100. N.J.S.12A:9-515 is amended to read as follows:

1 12A:9-515. Duration and Effectiveness of Financing Statement;
2 Effect of Lapsed Financing Statement.

3 (a) Five-year effectiveness. Except as otherwise provided in
4 subsections (b), (e), (f) and (g), a filed financing statement is effective
5 for a period of five years after the date of filing.

6 (b) Public-finance or manufactured-home transaction. Except as
7 otherwise provided in subsections (e), (f) and (g), an initial financing
8 statement filed in connection with a public-finance transaction or
9 manufactured-home transaction is effective for a period of 30 years
10 after the date of filing if it indicates that it is filed in connection with
11 a public-finance transaction or manufactured-home transaction.

12 (c) Lapse and continuation of financing statement. The
13 effectiveness of a filed financing statement lapses on the expiration of
14 the period of its effectiveness unless before the lapse a continuation
15 statement is filed pursuant to subsection (d). Upon lapse, a financing
16 statement ceases to be effective and any security interest or
17 agricultural lien that was perfected by the financing statement becomes
18 unperfected, unless the security interest is perfected otherwise. If the
19 security interest or agricultural lien becomes unperfected upon lapse,
20 it is deemed never to have been perfected as against a purchaser of the
21 collateral for value.

22 (d) When continuation statement may be filed. A continuation
23 statement may be filed only within six months before the expiration of
24 the five-year period specified in subsection (a) or the 30-year period
25 specified in subsection (b), whichever is applicable.

26 (e) Effect of filing continuation statement. Except as otherwise
27 provided in 12A:9-510, upon timely filing of a continuation statement,
28 the effectiveness of the initial financing statement continues for a
29 period of five years commencing on the day on which the financing
30 statement would have become ineffective in the absence of the filing.
31 Upon the expiration of the five-year period, the financing statement
32 lapses in the same manner as provided in subsection (c), unless, before
33 the lapse, another continuation statement is filed pursuant to
34 subsection (d). Succeeding continuation statements may be filed in the
35 same manner to continue the effectiveness of the initial financing
36 statement.

37 (f) Transmitting utility financing statement. If a debtor is a
38 transmitting utility and a filed financing statement so indicates, the
39 financing statement is effective until a termination statement is filed.

40 (g) Record of mortgage as financing statement. A record of
41 mortgage that is effective as a financing statement filed as a fixture
42 filing under 12A:9-502 (c) remains effective as a financing statement
43 filed as a fixture filing until the mortgage is released or satisfied of
44 record or its effectiveness otherwise terminates as to the real property.

45 (h) Bondable transition property. If a filed financing statement
46 relates to a security interest in bondable transition property and the

1 financing statement so states, it is effective until a termination
2 statement is filed.

3 (i) When a financing statement covers shares or ownership interests
4 evidenced by stock certificates or other instruments, and a leasehold
5 evidenced by a proprietary lease or either of the foregoing issued by
6 an entity formed for the purpose of cooperative ownership of real
7 estate and the financing statement so states, it shall be effective until
8 a termination statement is filed.

9 (cf: P.L.2001, c.386, s.80)

10

11 101. Section 20 of P.L.1987, c.381 is amended to read as follows:

12 20. [This act] P.L.1987, c.381 applies to all cooperatives created
13 within this State [after the effective date of this act] prior to the
14 effective date of P.L. , c. (C.) (now before the Legislature as
15 this bill). On or after the effective date of P.L. , c. (C.) (now
16 before the Legislature as this bill), the provisions of P.L. , c.
17 (C.) (now before the Legislature as this bill) shall apply to all
18 cooperatives, regardless of the date of creation, and the provisions of
19 P.L.1987, c.381 (C.46:8D-1 et al) shall only apply to the extent they
20 are not expressly overridden or repealed by P.L. , c. (C.)
21 (now before the Legislature as this bill).

22 (cf: P.L.1987, c.381, s.20)

23

24 102. (New section) It is the intent of the Legislature that any
25 rights, claims, entitlements, priorities, privileges, or benefits that
26 accrued under the laws set forth below prior to the effective date of
27 P.L. , c. (C.) (pending before the Legislature as this bill) shall not
28 be superseded by the adoption of P.L. , c. (C.) (pending before
29 the Legislature as this bill). P.L. , c. (C.) (pending before the
30 Legislature as this bill) shall supersede the laws set forth below with
31 respect to all rights, claims, entitlements, priorities, privileges, or
32 benefits that accrue after the effective date of P.L. , c. (C.)
33 (pending before the Legislature as this bill) and all matters concerning
34 a common interest community shall be solely governed by P.L. , c.
35 (C.) (pending before the Legislature as this bill), except with respect
36 to those common interest communities that are fully or partially
37 exempt from the terms of P.L. , c. (C.) (pending before the
38 Legislature as this bill), in which event the exempted common interest
39 communities and all persons owning an interest therein shall be bound,
40 to the extent applicable, by the provisions of the following:

41 Sections 1 through 28 of P.L.1963, c.168 (C.46:8A-1 et seq.);

42 Section 11 of P.L.1978, c.124 (C.46:8A-3.1);

43 Sections 1 through 30 of P.L.1969, c.257 (C.46:8B-1 et seq.);

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

45 Sections 2 and 3 of P.L.1979, c.157 (C.46:8B-12.1 and 46:8B-12.2)

46 Section 2 of P.L.1991, c.48 (C.46:8B-13.1);

1 Sections 1 through 8 of P.L.1979, c.297 (C.46:8B-31 et seq.);
2 Section 3 of P.L.1980, c.103 (C.46:8B-38); and
3 Sections 1 through 12 and 14 through 20 of P.L.1987, c.381
4 (C.46:8D-1 through 46:8D-12 and C.46:8D-13 through 46:8D-18).

5

6 103. This act shall take effect on the first day of the sixth month
7 after enactment, except that the Commissioner of Community Affairs
8 shall immediately take such administrative action as necessary to
9 effectuate the provisions of P.L. , c. (C.) (pending before the
10 Legislature as this bill).

11

12

13

STATEMENT

14

15 This bill seeks to consolidate all of the laws applicable to all types
16 of homeowner's associations, provide for certain homeowner
17 protections, clarify the powers of homeowners' associations and is
18 based, in part, on the recommendations of the Task Force of the
19 Assembly to Study Homeowners' Associations, which issued its report
20 to the Legislature on January 8, 1998.

21

22 The bill is a New Jersey version of the Uniform Common Interest
23 Ownership Act (UCIOA) which has been adopted, in full or substantial
24 part, by approximately 16 states. The UCIOA itself is an act of the
25 National Conference of Commissioners on Uniform State Laws. It
26 provides uniform guidelines for all forms of residential community
27 associations and is applicable to condominiums, fee simple multifamily
28 projects, home owner associations and cooperatives. The model act
29 was modified for New Jersey by a Statewide drafting committee. The
30 bill further combines with the model act many of the recommendations
31 of the Task Force of the Assembly to Study Homeowners'
32 Associations. One major recommendation of the Task Force was that
33 the law on community associations be consolidated and applied evenly
34 to all types of homeowners' associations. Therefore, the bill replaces
35 many of the laws dealing with these associations, including the
36 "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.), the
37 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), as well as
38 the "Cooperative Recording Act of New Jersey," P.L.1987, c.381
(C.46:8D-1 et seq.).

39

40 The bill consists of five separate articles, each addressing various
41 aspects of common interest property ownership. Article 1 of the bill
42 deals with the applicability of the act in general. Article 2 deals with
43 the creation, alteration and termination of common interest
44 communities. Article 3 provides the framework for the management of
45 a common interest community, including the creation and grant of
46 powers and duties to an executive board formed to manage the
common elements of a common interest community. Article 4 concerns

1 the protection of purchasers, and Article 5 deals with the oversight of
2 the executive boards by the State Department of Community Affairs.

3 Certain provisions of the bill address the problems inherent in
4 phased developments by allowing developers more flexibility in the
5 planning process to meet changed conditions in the marketplace. At
6 the same time, unit purchasers in phased developments must be
7 specifically informed of the potential risks and consequences if there
8 is modification of the development plan.

9 The bill clarifies that associations have, among other powers, the
10 power to grant easements over common property and pledge
11 assessment income in connection with loans.

12 In addition, the bill clarifies that all associations have the authority
13 to impose fines and late charges against delinquent unit owners,
14 provided that notice is provided and due process in the form of
15 alternative dispute resolution proceedings are afforded to the unit
16 owner. Although the Legislature granted that power to condominium
17 associations through the passage of P.L.1996, c.79, that law did not
18 include other types of homeowners' associations.

19 The bill seeks to provide various protections to homeowners who
20 reside in common interest communities overseen by community
21 associations.

22 The bill retains the requirement under current law that an
23 association provide a fair and efficient procedure for the resolution of
24 disputes between individual unit owners and the association, and
25 between unit owners, which shall be readily available as an alternative
26 to litigation. It adds significant detail currently absent from the law
27 with respect to the procedures to be followed to provide for a fair and
28 efficient alternative to litigation. The Commissioner of Community
29 Affairs retains oversight over the implementation of these procedures.

30 In addition, the bill provides specific requirements for open
31 meetings for boards, including working sessions open to unit owners,
32 and specifies comment periods which must be set aside for unit owners
33 wishing to participate in meetings. The bill also provides new
34 guidelines for access to records and for the imposition of fines by an
35 association, including a maximum fine amount that may be imposed by
36 an association. Among the homeowner protections, it also provides
37 for bidding for certain contracts; procedures to insure fair and open
38 governing board elections; procedures when associations require
39 access to individual units; limitations on leasing restrictions; and
40 disclosure of essential information to buyers of resale units within
41 community associations. It further clarifies the responsibility of
42 successor developers who complete a project commenced by a prior
43 developer.

44 The bill provides governmental oversight of common interest
45 community associations in several areas, in recognition of the quasi-
46 governmental powers granted to them. The bill requires registration of

1 all such associations with the Commissioner of Community Affairs and
2 the payment of a registration fee which is indexed to the size of the
3 membership of the association. The fees from the registration would
4 be utilized to offset the costs incurred by the department in providing
5 oversight and assistance to boards.

6 The bill creates an Office of the Ombudsman, within the
7 Department of Community Affairs, for common interest community
8 unit owners' associations. The Ombudsman is to provide assistance to
9 board members or officers of an association in receiving appropriate
10 training to enable them to execute their duties in an independent,
11 efficient and productive manner, including the provision of a list of
12 reference and educational materials appropriate for board members of
13 homeowners' associations. The Ombudsman would also be a source
14 for general budgetary guidance and could function as a liaison between
15 associations and any entity concerning disputes regarding code
16 compliance or inspections.

17 The bill amends the law commonly known as the Condominium
18 Services Law, P.L.1989, c.299 (C.40:67-23.2 et seq.), to clarify the
19 types of communities that are eligible for reimbursement from a
20 municipality for services provided to residents of the community. The
21 act defines a qualified community as one which has certain expenses
22 paid by a not-for-profit entity consisting exclusively of unit owners
23 within the community. Some municipalities have not provided services
24 or reimbursed communities for services provided based on their
25 determination that a homeowner's association executive board that is
26 still controlled by a developer is not an association comprised
27 exclusively of unit owners. The bill clarifies that transition of control
28 to the unit owners of a community is not a factor for eligibility for
29 reimbursement under the Condominium Services Law. The bill also
30 requires the Commissioner of Community Affairs to track compliance
31 by municipalities with the Condominium Services Law, and offer
32 budgetary guidance, if necessary.

33 The bill grants to the Commissioner of Community Affairs
34 increased authority in the oversight of community associations in
35 recognition of their quasi-governmental functions, regardless of
36 whether "transition" (control of the board by the unit owners) has
37 occurred. The commissioner is specifically authorized to hear
38 complaints and make final determinations in reported cases of
39 violations of statutory or regulatory requirements by community
40 associations or board members of an association. The commissioner is
41 empowered under the bill to remove a board member for flagrant,
42 continuing violations of statutes or regulations.