

[Fourth Reprint]

SENATE, No. 2492

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED SEPTEMBER 8, 2016

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SYNOPSIS

Enhances resident voting participation rights in common interest communities.

CURRENT VERSION OF TEXT

As amended by the General Assembly on March 16, 2017.

(Sponsorship Updated As Of: 5/23/2017)

1 AN ACT concerning the governance of common interest community
 2 associations, amending P.L.1977, c.419, and amending and
 3 supplementing P.L.1993, c.30.

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

7
 8 1. (New section) The Legislature finds and declares that:

9 a. In addition to living under State, county, and municipal
 10 government, recent estimates conclude that over one million New
 11 Jersey residents currently live under the governance of a common
 12 interest community association, such as a condominium,
 13 cooperative, or homeowners' association;

14 b. The owners and ³**[tenants living in]** residents of³ these
 15 communities often benefit from minimized maintenance
 16 responsibilities and greater assurances that neighboring properties
 17 will follow a predictable development scheme;

18 c. Along with these benefits, living under a community
 19 association also creates the necessity of paying assessments and
 20 fees in addition to the State and local taxes that other State residents
 21 pay, and requires compliance with property regulations that may be
 22 more stringent than those required by municipal government alone;

23 d. Because of the significant influence community associations
 24 have over the lives of their residents and because community
 25 associations are creatures of State law, it is unfair and runs contrary
 26 to American democratic values for these communities to be
 27 governed by trustees who are not elected in a fair and open manner;

28 e. ⁴**A recent court decision has determined that, although the**
 29 **statute governing election procedures in community associations,**
 30 **The supplement to**⁴ **"The Planned Real Estate Development Full**
 31 **Disclosure Act" ("PREDFDA"), P.L.1977, c.419 (C.45:22A-21 et**
 32 **seq.),** ⁴**[as supplemented and amended by]** ⁴**specifically,** ⁴**P.L.1993,**
 33 **c.30** ⁴**[(C.45:22A-43 et al.)]** ⁴**(C.45:22A-43 et seq.)**⁴ , ⁴**[applies to**
 34 **all community associations, regardless of their dates of**
 35 **establishment, the statute has not previously given all unit owners**
 36 **the right to nominate and vote for each executive board member**
 37 **representing their respective communities]** ⁴**provided all owners and**
 38 **residents in common interest residential communities with specific**
 39 **rights and protections. These rights and protections exist regardless**
 40 **of whether a developer established the community prior to the**
 41 **effective date of PREDFDA. The supplement was not specific in**
 42 **declaring that all unit owners were members of the association or in**

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCU committee amendments adopted October 13, 2016.

²Assembly AHO committee amendments adopted December 5, 2016.

³Assembly floor amendments adopted February 15, 2017.

⁴Assembly floor amendments adopted March 16, 2017.

1 recognizing that, along with certain specific tenant residents, all
 2 unit owners were entitled to participate fully in elections of
 3 members of the executive board⁴ ;

4 f.³ ⁴[Residents] Unit owners⁴ living ⁴[under] in⁴ community
 5 associations should have the right to ⁴nominate candidates, run for,⁴
 6 freely elect⁴, and be elected to⁴ the ⁴[members of the]⁴ executive
 7 boards that govern the communities ⁴[, and to run for executive
 8 board positions]⁴ ; and

9 ³[f.] g.³ It is necessary and in the public interest for the
 10 Legislature to enact legislation ³[establishing] to amend
 11 PREFDA in order to:

12 (1) Establish³ ⁴that all unit owners are members of the
 13 association and provide⁴ basic election participation rights for
 14 ⁴[the] certain⁴ residents of common interest communities ³,
 15 including the right of resident owners in good standing to⁴ [make]
 16 nominate any unit owner in good standing as a candidate for any
 17 position on the⁴ executive board ⁴[nominations]⁴, run,⁴ [and]⁴
 18 appear on the ballot,⁴ [regardless of the] and be elected to any⁴
 19 executive board position, in every executive board election, and for
 20 those rights to apply regardless of the date of a community's
 21 establishment; and

22 (2) Establish that, except under the very limited exceptions
 23 provided, a person may not serve on an executive board unless
 24 elected through a process consistent with the provisions of
 25 PREFDA³.

26
 27 2. Section 3 of P.L.1977, c.419 (C.45:22A-23) is amended to
 28 read as follows:

29 3. As used in this act unless the context clearly indicates
 30 otherwise:

31 a. "Disposition" means any sales, contract, lease, assignment,
 32 or other transaction concerning a planned real estate development.

33 b. "Developer" or "subdivider" means any person who disposes
 34 or offers to dispose of any lot, parcel, unit, or interest in a planned
 35 real estate development.

36 c. "Offer" means any inducement, solicitation, advertisement,
 37 or attempt to encourage a person to acquire a unit, parcel, lot, or
 38 interest in a planned real estate development.

39 d. "Purchaser" or "owner" means any person or persons who
 40 acquires a legal or equitable interest in a unit, lot, or parcel in a
 41 planned real estate development, and shall be deemed to include a
 42 prospective purchaser or owner. ³[Following termination of
 43 developer control of the executive board, pursuant to paragraph (3)
 44 of subsection a. of section 5 of P.L.1993, c.30 (C.45:22A-47), this
 45 definition shall not be construed to create a voting right, or any
 46 other right, for a prospective purchaser or prospective owner.]

47 However, as used in⁴ [sections 1 through 6 of]⁴ P.L.1993, c.30 ⁴[,

1 (C.45:22A-43 through C.45:22A-48 et al.) (C.45:22A-43 et seq.)⁴ ,
2 "owner" means any person owning a unit, or an "owner" ⁴or holder
3 of a "proprietary lease,"⁴ as ⁴those terms are⁴ defined under
4 ⁴[subsection] subsections⁴ i. ⁴and k.⁴ of section 3 of "The
5 Cooperative Recording Act of New Jersey," P.L.1987, c.381
6 (C.46:8D-3), if the development is a cooperative.³

7 e. "State" means the State of New Jersey.

8 f. "Commissioner" means the Commissioner of Community
9 Affairs.

10 g. "Person" shall be defined as in R.S.1:1-2.

11 h. "Planned real estate development" or "development" means
12 any real property situated within the State, whether contiguous or
13 not, which consists of or will consist of, separately owned areas,
14 irrespective of form, be it lots, parcels, units, or interest, and which
15 are offered or disposed of pursuant to a common promotional plan,
16 and providing for common or shared elements or interests in real
17 property. This definition shall not apply to any form of
18 timesharing.

19 This definition shall specifically include, but shall not be limited
20 to, property subject to the "Condominium Act," P.L.1969, c.257
21 (C.46:8B-1 et seq.), any form of homeowners' association, any
22 housing cooperative or to any community trust or other trust device.

23 This definition shall be construed liberally to effectuate the
24 purposes of this act.

25 i. "Common promotional plan" means any offer for the
26 disposition of lots, parcels, units or interests of real property by a
27 single person or group of persons acting in concert, where such lots,
28 parcels, units or interests are contiguous, or are known, designated
29 or advertised as a common entity or by a common name.

30 j. "Advertising" means and includes the publication or causing
31 to be published of any information offering for disposition or for
32 the purpose of causing or inducing any other person to purchase an
33 interest in a planned real estate development, including the land
34 sales contract to be used and any photographs or drawings or artist's
35 representations of physical conditions or facilities on the property
36 existing or to exist by means of any:

37 (1) Newspaper or periodical;

38 (2) Radio or television broadcast;

39 (3) Written or printed or photographic matter;

40 (4) Billboards or signs;

41 (5) Display of model houses or units;

42 (6) Material used in connection with the disposition or offer of
43 the development by radio, television, telephone or any other
44 electronic means; or

45 (7) Material used by developers or their agents to induce
46 prospective purchasers to visit the development, particularly
47 vacation certificates which require the holders of such certificates to
48 attend or submit to a sales presentation by a developer or his agents.

1 "Advertising" does not mean and shall not be deemed to include:
 2 Stockholder communications such as annual reports and interim
 3 financial reports, proxy materials, registration statements, securities
 4 prospectuses, applications for listing securities on stock exchanges,
 5 and the like; all communications addressed to and relating to the
 6 account of any person who has previously executed a contract for
 7 the purchase of the subdivider's lands except when directed to the
 8 sale of additional lands.

9 k. "Non-binding reservation agreement" means an agreement
 10 between the developer and a purchaser and which may be canceled
 11 without penalty by either party upon written notice at any time prior
 12 to the formation of a contract for the disposition of any lot, parcel,
 13 unit or interest in a planned real estate development.

14 l. "Blanket encumbrance" means a trust deed, mortgage,
 15 judgment, or any other lien or encumbrance, including an option or
 16 contract to sell or a trust agreement, affecting a development or
 17 affecting more than one lot, unit, parcel, or interest therein, but does
 18 not include any lien or other encumbrance arising as the result of
 19 the imposition of any tax assessment by any public authority.

20 m. "Conversion" means any change with respect to a real estate
 21 development or subdivision, apartment complex or other entity
 22 concerned with the ownership, use or management of real property
 23 which would make such entity a planned real estate development.

24 n. "Association" means an association for the management of
 25 common elements and facilities, organized pursuant to section 1 of
 26 P.L.1993, c.30 (C.45:22A-43).

27 o. "Executive board" means the executive board of an
 28 association, as provided for in section 3 of P.L.1993, c.30
 29 (C.45:22A- 45).

30 p. "Unit" means any lot, parcel, unit or interest in a planned
 31 real estate development that is, or is intended to be, a separately
 32 owned area thereof.

33 q. "Association member" means the owner of a unit within a
 34 planned real estate development, or a unit's tenant ²[or the
 35 developer]² to the extent that the ⁴[bylaws] governing documents⁴
 36 ²of the planned real estate development² permit tenant ²[or
 37 developer]² membership in the association ², and the developer to
 38 the extent that the development contains unsold lots, parcels, units,
 39 or interests² pursuant to subsection ⁴[b.] c.⁴ of section 1 of
 40 P.L.1993, c.30 (C.45:22A-43). ³This definition shall not be
 41 construed to provide the developer a different ⁴[voting interest]
 42 transition obligation⁴ than ⁴[is permitted] that required⁴ pursuant to
 43 section 5 of P.L.1993, c.30 (C.45:22A-47) ⁴, or to require that the
 44 developer is allowed to vote in executive board elections⁴ .³

45 r. "Good standing" means the status ³[1.] =³ solely with
 46 respect to eligibility to ³(1)³ vote in executive board elections ²[or
 47 to] , (2) vote to² amend the bylaws ³,³ and ³[eligibility to] (3)³

1 nominate or run for any membership position on the executive
 2 board ³[, ¹ assigned to unit owners] – applicable to an association
 3 member³ who ¹[meet qualifications not more excessive than
 4 compliance with the development's governing documents, and
 5 who]¹ ³[are] is³ current on the payment of ¹[all fees lawfully
 6 assigned to the unit] common expenses, late fees, interest on unpaid
 7 assessments, legal fees, or other charges lawfully assessed, and
 8 ³[who have] which association member has³ not failed to satisfy a
 9 judgment for common expenses, late fees, interest on unpaid
 10 assessments, legal fees, or other charges lawfully assessed¹ . ³An
 11 association member is in good standing if he is in full compliance
 12 with a settlement agreement with respect to the payments of
 13 assessments, legal fees or other charges lawfully assessed, or the
 14 association member has a pending, unresolved dispute concerning
 15 charges assessed which dispute has been initiated: through a valid
 16 alternative to litigation pursuant to subsection c. of section 2 of
 17 P.L.1993, c.30 (C.45:22A-44); through subsection (k) of section 14
 18 of the "Condominium Act," P.L.1969, c.257 (C.46:8B-14); or
 19 through a pertinent court action.³

20 s. "Voting-eligible tenant" means a tenant of a unit within a
 21 planned real estate development ²[that permits] in which ⁴:

22 (1)⁴ the ³[bylaws of the development permit²] ⁴[association
 23 permits³] governing documents of the development permit⁴ the
 24 tenant's participation in executive board elections ²[through its
 25 bylaws]² , ⁴[but shall not include a tenant whose right to vote is
 26 derived solely] and

27 (2) either (a) the development has allowed tenant participation in
 28 executive board elections as a standard practice prior to the
 29 effective date of P.L. c. (C.) (pending before the
 30 Legislature as this bill), or (b) the owner has affirmatively
 31 acknowledged the right of the tenant to vote through a provision of
 32 a written lease agreement or separate document.

33 This definition shall not be construed to affect voting⁴ as an
 34 agent of the ³[unit]³ owner through a proxy or power of attorney.
 35 ⁴Pursuant to subsection d. of this section, if the development is a
 36 cooperative corporation, then, an "owner" or holder of a
 37 "proprietary lease," as those terms are defined under subsections i.
 38 and k. of section 3 of "The Cooperative Recording Act of New
 39 Jersey," P.L.1987, c.381 (C.46:8D-3), is also an "owner," not a
 40 tenant, for the purposes of P.L.1993, c.30 (C.45:22A-43 et seq.).⁴
 41 (cf: P.L.2006, c.63, s.39)

42
 43 ³3. Section 22 of P.L.1977, c. 419 (C.45:22A-42) is amended to
 44 read as follows:

45 22. **[This act]** The provisions of P.L.1977, c.419 (C.45:22A-21
 46 et seq.), concerning the formation and registration of planned real

1 estate developments, shall not apply to any portion of a planned real
 2 estate development which has on the effective date of **[this act]**
 3 P.L.1977, c.419 (C.45:22A-21 et seq.):

- 4 a. Its building permit or permits; or
 5 b. Final municipal approval of (1) its site plan or (2), in the case
 6 of single or two-family homes or separate lots, its subdivision plat;
 7 provided that the land is not valued, assessed and taxed as an
 8 agricultural or horticultural use pursuant to the "Farmland
 9 Assessment Act of 1964" , P.L.1964, c.48 (C.54:4-23.1 et seq.);
 10 provided further that this section shall not be construed as applying
 11 to conversions or Retirement Subdivisions or Communities as
 12 defined in the Retirement Community Full Disclosure Act,
 13 P.L.1969, c.215 (C.45:22A-1 et seq.).³
 14 (cf: P.L.1977, c. 419, s. 22)

15
 16 ³**[3.] 4.**³ Section 1 of P.L.1993, c.30 (C.45:22A-43) is amended
 17 to read as follows:

18 1. a. A developer subject to the registration requirements of
 19 section 6 of P.L.1977, c.419 (C.45:22A-26) shall organize or cause
 20 to be organized an association whose obligation it shall be to
 21 manage the common elements and facilities. The association shall
 22 be formed on or before the filing of the master deed or declaration
 23 of covenants and restrictions, and may be formed as a for-profit or
 24 nonprofit corporation, unincorporated association, or any other form
 25 permitted by law. ³The application of P.L.1993, c.30 ⁴**[**(C.45:22A-
 26 43 et al.)**]** (C.45:22A-43 et seq.)⁴ to the association of an existing
 27 planned real estate development shall not be limited by:

28 (1) whether the developer has been subject to ⁴, or exempted
 29 from, ⁴ the registration requirements of section 6 of P.L.1977, c.419
 30 (C.45:22A-26); ⁴or⁴

31 (2) the development's date of establishment ⁴; or

32 (3) the exemption for offers and dispositions of fewer than 100
 33 lots, parcels, units or interests established under paragraph (7) of
 34 subsection a. of section 5 of P.L.1977, c.419 (C.45:22A-25)]⁴ .³

35 b. ⁴Nothing in subsection a. of this section shall be construed to
 36 require the registration of a planned real estate development that is
 37 not otherwise required to register pursuant to section 6 of P.L.1977,
 38 c.419 (C.45:22A-26).

39 c.⁴ Membership in the association of a planned real estate
 40 development shall be comprised ³**[exclusively]**³ of each ³**[unit]**³
 41 owner within the planned real estate development, and may include
 42 the developer if the development contains unsold lots, parcels,
 43 units, or interests. ³**[If]**³ ²**[permitted by]**² ³**[the association's**
 44 bylaws]³ ²**[, a tenant may]** ³**[specifically provide for the**
 45 participation of the voting-eligible tenant, then the voting eligible
 46 tenant shall² also be entitled to ²participate in² association]³
 47 ²**[membership. However, a]** ³**[matters]** An association may permit

1 tenant participation in executive board elections, tenant membership
 2 in the association, or both³. A voting-eligible² tenant² [entitled to
 3 association membership]² shall have only the same voting rights as
 4 the owner of the² unit² [owners if the tenant is a voting-eligible
 5 tenant] that the tenant leases, and such voting rights shall be in
 6 place of and not in addition to the rights of the owner of the leased
 7 unit^{2 3}, except as permitted under paragraph (9) of subsection⁴ [a.]
 8 c.⁴ of section 6 of P.L. , c. (C.) (pending before the
 9 Legislature as this bill)³. Pursuant to² paragraph³ [(7)] (9)³ of²
 10 subsection² [e.]⁴ [a.]² c.⁴ of section³ [5] 6³ of P.L. , c. (C.)
 11 (pending before the Legislature as this bill), the² [voting influence
 12 of] votes associated with² a unit shall not be altered by the
 13 number of association members, and] participation of² voting-
 14 eligible tenants² [, who own or reside in the unit]².
 15 (cf: P.L.1993, c.30, s.1)

16
 17 ³[4.] 5.³ Section 3 of P.L.1993, c.30 (C.45:22A-45) is
 18 amended to read as follows:

19 3. a. The form of administration of an association organized
 20 pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43) shall provide
 21 for the election of an executive board, elected by the association
 22 members^{3,3} and voting-eligible tenants³ where applicable³, and
 23 responsible to the members of the association pursuant to section 4
 24 of P.L.1993, c.30 (C.45:22A-46), through which the powers of the
 25 association shall be exercised and its functions performed.

26 b. Subject to the master deed, declaration of covenants and
 27 restrictions, bylaws or other instruments of creation, subsection d.
 28 of this section, and the laws of the State, the executive board may
 29 act in all instances on behalf of the association.

30 c. The members of the executive board appointed by the
 31 developer shall be liable as fiduciaries to the owners for their acts
 32 or omissions.

33 d. During control of the executive board by the developer,
 34 copies of the annual audit of association funds shall be available for
 35 inspection by owners or their authorized representative at the
 36 project site.

37 (cf: P.L.1993, c.30, s.3)

38
 39 ³[5.] 6.³ (New section) a. ²[Notice of the right to nominate
 40 candidates for election to the executive board shall be mailed, hand-
 41 delivered or, where permitted by the bylaws, electronically
 42 delivered to each association member and each voting-eligible
 43 tenant at least 30 days prior to the meeting at which an election of
 44 the members of the executive board will be conducted.

45 b. Each position on the executive board shall be up for election
 46 every four years, except that the bylaws may provide for more
 47 frequent elections.

1 c. If the bylaws permit tenant participation in executive board
2 elections, then a tenant may exercise the voting rights of a unit
3 owner with whom he has contracted a leasehold interest.

4 d. (1) Subject to the exceptions under subsection g. of this
5 section, a resident-owner in good standing shall have the authority
6 to:

7 (a) nominate himself or any other resident-owner in good
8 standing to run for any membership position on the executive board
9 in an election at least 21 days subsequent to the nomination; and

10 (b) run for any membership position on the executive board
11 after obtaining a nomination at least 21 days prior to the election.

12 (2) In the case of a person nominated by someone other than
13 themselves, if the nominated person accepts the nomination in
14 writing within seven days of being nominated and the number of
15 candidates is less than the number of executive board positions
16 open for election, the 21-day requirement stated in paragraph (1) of
17 this subsection shall not apply.

18 (3) The bylaws may extend the right to nominate and run for
19 positions on the executive board provided pursuant to paragraph (1)
20 of this subsection, to all unit owners, all tenants, or others.

21 (4) Subject to the exceptions provided in subsection g. of this
22 section, all association members and voting-eligible tenants shall
23 have the authority to vote in each election for each position of
24 membership on the executive board. The bylaws may limit voting
25 eligibility under this paragraph to association members in good
26 standing.

27 e. Unless the bylaws provide for the voting interest of each unit
28 to be proportional to the unit's value or size, each unit conveyed to
29 an owner shall be entitled to one vote regardless of the number of
30 association members, and voting-eligible tenants, who own or
31 reside in a unit] ⁴[No] ⁴ ³[bylaw, rule or other governing document
32 provision of an] ³ ⁴[association may ³restrict the right to participate
33 in elections to the executive board, by³ :]

34 An association shall hold executive board elections in
35 accordance with the provisions of its governing documents,
36 including validly-adopted executive board rules, that do not conflict
37 with the provisions of this section. If such documents do not set a
38 specific time or interval, the elections shall be held at two year
39 intervals. If an association has not held an election in compliance
40 with its governing documents in two or more years, it shall hold an
41 election within 90 days of the submission to any current executive
42 board member of a petition signed by 25 or more percent of
43 association members in good standing, but in no event less than the
44 number of association members required to meet the quorum
45 requirements set forth in the governing documents. If an
46 association has no executive board members and association
47 members fail to act on petition or by majority, any association
48 member or group thereof, at common expense and, upon written

1 notice to all owners, may petition a court of competent jurisdiction
2 for authority to act temporarily in the interests of the association
3 and to organize and hold an election within 90 days of the date of
4 the court order. Any proxies used by an association must contain a
5 prominent notice that use of the proxy is voluntary on the part of
6 the granting owner, that it can be revoked at any time before the
7 proxy holder casts a vote, and that absentee ballots are available.
8 An association may not use proxies for an executive board member
9 election without also making absentee ballots available.

10 b. An association of a development with fewer than 50 units
11 shall ensure an executive board election system that includes: (1)
12 the provision of election notice, (2) the provision of the ability to
13 nominate and vote for any association member in good standing, (3)
14 the provision of an opportunity to review any candidacy
15 qualifications such that the owner is permitted to be a candidate for
16 election to the board, (4) the provision of ready access to
17 information on when and how to vote, and (5) the counting of
18 ballots and verification of eligibility to vote, all of which shall be
19 conducted in a non-fraudulent manner. Such association shall also
20 be subject to the requirements of paragraphs (9) and (10) of
21 subsection c. of this section.

22 c. In order to ensure open and fair executive board elections, the
23 following provisions of this subsection shall apply to all
24 associations of developments with 50 or more units, except for
25 paragraphs (9) and (10), which shall apply to associations of all
26 developments.⁴

27 (1) ³Provide⁴ ⁴Providing³ An association shall not provide⁴
28 for a term of ³a an executive board member to be for more than 4
29 years, provided that nothing ³will³ shall³ prevent ³a an
30 executive³ board member from continuing to serve until his or her
31 successor is duly qualified and elected ⁴[:]⁴.

32 (2) ³Prohibit⁴ ⁴Prohibiting³ An association shall not prohibit⁴
33 a ⁴voting-eligible⁴ tenant⁴, where applicable,⁴ from casting a vote
34 allocated to a unit if the bylaws otherwise permit tenant
35 participation in an election of ³executive³ board members ⁴[:]⁴ nor
36 prohibit an individual acting pursuant to a valid power of attorney
37 or proxy from casting a vote.⁴

38 (3) ³Provide for less than 14 nor more than 60 days' written
39 notice of the meeting at which an election of board members is
40 scheduled, which notice will be personally delivered, mailed by
41 U.S. Mail, or electronically transmitted where an owner has agreed
42 to accept notice by electronic means;

43 (4) Prohibit a unit owner⁴ ⁴Failing to⁴ An association shall⁴
44 provide written notice to all association members no later than 30
45 days prior to the date for the mailing of the notice of the meeting set
46 forth in paragraph (5) of this subsection that informs association
47 members of the right to nominate themselves or other association

1 members in good standing ⁴[as a candidate for] for candidacy to
2 serve on ⁴the executive board ⁴[:] .⁴

3 (4) ⁴[Prohibiting an association member ³in good standing.] An
4 association, ⁴subject to the exceptions under subsection ²[c.] ⁴[d.]
5 f. ⁴of this section, ⁴shall not prohibit an association member in good
6 standing ⁴from nominating ³[themselves] himself ³ ⁴or herself, ⁴or
7 any other ³[unit owner] association member ³in good standing as a
8 candidate for any membership position on the executive board, so
9 long as the nomination is made prior to the ⁴[preparation and] ⁴
10 mailing of ballots or proxies to the ³association ³members, which
11 mailing ³shall occur no earlier than: (a) the day following the
12 expiration of the time period within which candidates must be
13 nominated, or (b) where no expiration date is set forth for
14 nomination of candidates, then the business day prior to the mailing
15 of the notice ³of the election, ³required pursuant to paragraph
16 [3] (5) ³of this subsection ³. This paragraph shall not be
17 implemented in a manner that results in the denial of a realistic
18 opportunity for a unit owner to nominate a candidate] ³ ⁴[:] .⁴ The
19 period for submitting nominations shall not be less than 14 days
20 from the mailing of the request for nominations.⁴

21 (5) ³[Prohibit] ⁴[Providing for] An association shall provide
22 association members written notice of an election by personal
23 delivery, mail, or electronic means, no ⁴less than 14 nor more than
24 60 ⁴[days' written notice of] days prior to ⁴the meeting at which an
25 election of executive board members is scheduled ⁴[, which notice
26 shall be personally delivered, mailed, or electronically transmitted,
27 if an association member has agreed to accept notice by electronic
28 means] ⁴ . This notice shall include a proxy ballot ⁴[or] and an
29 absentee ballot, unless prohibited by the bylaws, ⁴[with] which
30 ballots shall list in alphabetical order by last name ⁴the names of all
31 candidates nominated pursuant to paragraph (4) of this subsection
32 ⁴[, provided that where electronic balloting is to be used, the names
33 of all candidates nominated pursuant to paragraph (4) of this
34 subsection shall appear on the electronic ballot] ⁴ . In the case of
35 mailing, the notice shall be effective when deposited in the mailbox
36 with proper postage ⁴[:] . The notice may only be sent by
37 electronic means if either (a) the affected association member, or
38 voting-eligible tenant where applicable, has agreed in writing to
39 accept notice by electronic means; or (b) the governing documents
40 permit electronic notices, provided another form of voting by
41 absentee balloting or proxy voting is available.⁴

42 (6) ⁴[Using] An association shall use ⁴ballots, whether paper
43 ballots or electronic ballots, that ⁴[do not] ⁴contain the names of all
44 persons nominated as a candidate for the executive board ⁴[:] .⁴

1 (7) ⁴~~Prohibiting~~² An association shall not prohibit⁴ any ³~~unit~~
 2 ~~owner~~ association member³ in good standing, ⁴or voting-eligible
 3 tenant where applicable,⁴ subject to the exceptions under subsection
 4 ³~~c.~~ ⁴~~d.~~³ f.⁴ of this section ³and any limitation on the number of
 5 votes per unit permitted under paragraph (9) of this subsection³ ,
 6 from voting for any nominated candidate in an executive board
 7 election ⁴~~;~~ .⁴

8 ³~~(6) Prevent~~ (8) ⁴~~Preventing~~³ An association shall not
 9 prevent⁴ voting for ³~~a~~ an executive³ board member by electronic
 10 means where the executive board determines to employ voting in
 11 such manner and an ³~~owner~~ association member³ ⁴, or voting-
 12 eligible tenant where applicable,⁴ consents to casting a vote in such
 13 manner ⁴~~;~~ .⁴ ³~~or~~

14 (7) ~~Provide~~ (9) ⁴~~Providing~~³ An association shall not provide⁴
 15 for an allocation of votes other than one vote for each unit, ³or such
 16 larger number of equal votes per unit as may be set forth in the
 17 governing documents of the association,³ except ³~~(a)~~³ where the
 18 bylaws or other governing document provide for the voting interest
 19 to be proportional to a unit's value or size² ³, (b) where the
 20 governing documents permit more than one vote to be cast by each
 21 unit on an equal basis or a basis consistent with each unit's value or
 22 size, or (c) where the governing documents do not set forth the
 23 number of votes that may be cast by each unit, then in accordance
 24 with a rule adopted by the executive board that allows more than
 25 one vote to be cast by each unit, provided such rule assigns an equal
 26 number of votes to each unit ⁴~~;~~ or] .⁴

27 (10) ⁴~~Establishing election~~ Election⁴ procedures ⁴~~that~~ shall
 28 not be established or administered in any way to⁴ prohibit
 29 participation by the residents of low or moderate income housing
 30 units³ .

31 ²~~f.~~ ⁴~~b.~~² d.⁴ Initial executive board elections in condominium
 32 associations, governed under the "Condominium Act," P.L.1969,
 33 c.257 (C.46:8B-1 et seq.), shall follow the notice timeline under
 34 subsection b. of section 2 of P.L.1979, c.157 (C.46:8B-12.1), and
 35 shall not be subject to ²~~the notice requirements under subsections~~
 36 a. and d. of]² this section.

37 ²~~g.~~ ⁴~~c.~~² e.⁴ ³Whether or not formed as a nonprofit
 38 corporation, associations ⁴of developments of 50 or more units⁴
 39 shall conform to the requirements of the "New Jersey Nonprofit
 40 Corporation Act," P.L.1983, c.127 (N.J.S.15A:1-1 et seq.) regarding
 41 the counting of ballots.

42 ⁴~~d.~~³ f.⁴ (1) It shall be permissible ²for the bylaws of the
 43 association to provide²:

44 (a) for the association members ³,³ and voting-eligible tenants
 45 ³where applicable,³ of a planned real estate development with units
 46 of different use types to nominate and vote for some members of the

1 executive board and, pursuant to the mixed-use development's
2 governing documents, have other members of the executive board
3 nominated and elected by association members and voting-eligible
4 tenants of units of a different use type;

5 (b) for the association members ^{3,3} and voting-eligible tenants
6 ³where applicable,³ of a planned real estate development to
7 nominate and vote only for some members of the executive board
8 based upon a distribution that allocates votes with approximate
9 proportionality to the number, value, or size of units located in
10 certain geographical areas within the development;

11 (c) ²**【to limit】** for a limitation on² the number of executive board
12 members nominated and elected by only certain association
13 members, and voting-eligible tenants ³where applicable³, if that
14 limit is based upon a classification intended to further the election
15 of one or more executive board members by the association
16 members, and voting-eligible tenants ³where applicable³, of
17 affordable housing units that represent a minority of the units in a
18 planned real estate development; ³**【and】**³

19 (d) for the association members, and voting-eligible tenants
20 ³where applicable³, of a planned real estate development to
21 nominate and vote for some members of the executive board and,
22 pursuant to the governing documents, have other members of the
23 executive board nominated and elected by the association members,
24 and voting-eligible tenants ³where applicable³, of one or more
25 separate developments, so long as each development's voting
26 weight is approximately proportional, based on the number, value,
27 or size of the units; ³and

28 (e) that ⁴, except for executive board members serving as
29 representatives of the developer during the period prior to surrender
30 of control to the owners pursuant to section 5 of P.L.1993, c.30
31 (C.45:22A-47),⁴ not more than one owner, entity-owner
32 representative, or voting-eligible tenant where applicable, from a
33 single unit may serve on the governing board simultaneously;³

34 (2) The executive board of an umbrella or master association
35 that does not directly contain units need not be elected by
36 individuals who are association members, and voting-eligible
37 tenants ³where applicable³, with units within the geographical area
38 of the umbrella or master association, provided the members of the
39 executive board serve as executive board members of another
40 planned real estate development executive board, and have been
41 nominated and elected by the association members, and voting-
42 eligible tenants ³where applicable³, with units in that planned real
43 estate development, in compliance with this section.

44 (3) ³**【The requirements of this section do not apply to members**
45 **of the executive board that may be appointed by the developer**
46 **pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47)】** **Except with**
47 **regard to a planned real estate development containing fewer than**

1 ⁴[10] 50⁴ units, and any appointment by the developer permitted
2 pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), an
3 association shall:

4 (a) not allow a person to take an executive board position
5 through appointment, provided that nothing herein shall prevent the
6 executive board members of an association from filling a vacancy in
7 the executive board created by resignation, death, failure to
8 maintain any reasonable qualification, including maintaining good
9 standing, to be an executive board member or by removal following
10 a vote in favor of removal open to all association members in
11 accordance with the terms of the bylaws; and

12 (b) ensure that, in order to serve on the executive board, a person
13 shall be elected through a process that does not conflict with the
14 provisions of this section³.

15
16 ³[6.] 7.³ Section 4 of P.L.1993, c.30 (C.45:22A-46) is amended
17 to read as follows:

18 4. The bylaws of the association, which shall initially be
19 recorded with the master deed shall include, in addition to any other
20 lawful provisions, the following:

21 a. A requirement that all meetings of the executive board,
22 except conference or working sessions at which no binding votes
23 are to be taken, shall be open to attendance by all ³[unit owners]
24 association members³ , and voting-eligible tenants where
25 applicable, and adequate notice of any such meeting shall be given
26 to all ³[unit owners] association members³ , and voting-eligible
27 tenants where applicable, in such manner as the bylaws shall
28 prescribe; except that the executive board may exclude or restrict
29 attendance at those meetings, or portions of meetings, dealing with
30 (1) any matter the disclosure of which would constitute an
31 unwarranted invasion of individual privacy; (2) any pending or
32 anticipated litigation or contract negotiations; (3) any matters
33 falling within the attorney-client privilege, to the extent that
34 confidentiality is required in order for the attorney to exercise his
35 ethical duties as a lawyer, or (4) any matter involving the
36 employment, promotion, discipline or dismissal of a specific officer
37 or employee of the association. At each meeting required under this
38 subsection to be open to all ³[unit owners] association members³ ,
39 and voting-eligible tenants where applicable, the participation of
40 unit ³[unit owners] association members³ , and voting-eligible
41 tenants where applicable, in the proceedings or the provision of a
42 public comment session shall be at the discretion of the executive
43 board, minutes of the proceedings shall be taken, and copies of
44 those minutes shall be made available to all ³[unit owners]
45 association members³ , and voting-eligible tenants where
46 applicable, before the next open meeting.

1 b. The method of calling meetings of ³[unit owners]
2 association members³ , and voting-eligible tenants where
3 applicable, the percentage of ³[unit owners] association members³ ,
4 and voting-eligible tenants where applicable, or voting rights
5 required to make decisions and to constitute a quorum. The bylaws
6 may, nevertheless, provide that ³[unit owners] an individual
7 association member³ , and ³a³ voting-eligible ³[tenants] tenant³
8 where applicable, may waive notice of meetings ³in writing,³ or
9 may act by written agreement without meetings.

10 c. The manner of collecting from ³[unit]³ owners their
11 respective shares of common expenses and the method of
12 distribution to the ³[unit]³ owners of their respective shares of
13 common surplus or such other application of common surplus as
14 may be duly authorized by the bylaws.

15 d. (1) The method by which the bylaws may be amended,
16 provided that no amendment shall be effective until recorded in the
17 same office as the then existing bylaws. The bylaws may also
18 provide a method for the adoption, amendment and enforcement of
19 reasonable administrative rules and regulations relating to the
20 operation, use, maintenance and enjoyment of the units and of the
21 common elements, including limited common elements.

22 (2) If association bylaws provide for no method of their
23 amendment by a vote of the association members ³open to all
24 association members³ , or only allow association members to amend
25 the bylaws through a majority vote exceeding a two-thirds majority,
26 then the ²association² members may amend the bylaws by an
27 affirmative vote of ²[two-thirds] a majority² of the total authorized
28 votes in the association. If the bylaws do not provide for a method
29 by which the ²association² members may call a meeting of the
30 ²association² members to conduct a vote to amend the bylaws or do
31 not contain provisions concerning the subject matter of
32 subparagraphs (a) through (f) of this paragraph, then a vote
33 concerning an amendment to the bylaws shall be conducted as
34 follows:

35 (a) fifteen percent of the ²association² members may request a
36 meeting of the association's membership by executing a document
37 requesting that a special meeting of the ²association² membership
38 be held, or if the annual meeting of the ²association² membership
39 ³[will] is scheduled to³ occur within 60 days of the date of the
40 request, then the amendment vote shall be held at the annual
41 meeting;

42 (b) if the vote ³[will not] is not scheduled to³ take place at the
43 annual meeting of the association, the executive board shall
44 schedule the special meeting of the ²association² membership to
45 occur within 60 days of the receipt of the request ⁴[, which] .
46 Notice of the meeting shall be provided to the association members

1 and voting-eligible tenants, where applicable, at least 14 days prior
2 to the date of the meeting. The⁴ special meeting shall be held
3 ³[between the hours of 7:00 p.m. and 8:00 p.m., except that if such
4 day is a Sunday, the meeting shall be held on the next day
5 thereafter] at a ⁴reasonable⁴ time ⁴[when] that is likely to permit⁴
6 most association members ⁴[are able]⁴ to attend³;

7 (c) the language of the ¹proposed¹ amendment shall be
8 ¹[submitted to the association and shall be placed in appropriate
9 form for distribution to the membership, which] unambiguous and
10 consistent with applicable law and with the provisions of the bylaws
11 that are not proposed to be amended, and if not in such condition
12 shall be revised to satisfy that requirement. Upon satisfaction of
13 this requirement, the¹ amendment shall be mailed, hand-delivered
14 or, if the bylaws permit, electronically delivered, together with the
15 notice of the meeting to the ²association² membership at least 10
16 days prior to the meeting;

17 (d) if permitted by the association's bylaws, the notice of the
18 meeting shall include a proxy ballot or absentee ballot with
19 instructions for the return of same, which instructions shall permit
20 facsimile or electronic mail delivery of the proxy ballot or absentee
21 ballot to the association and shall not require receipt of the proxy or
22 absentee ballot more than one business day prior to the meeting;

23 (e) if a sufficient number of ballots or proxies are not received
24 at the special or annual meeting to conclusively determine that the
25 proposed amendment has been approved or rejected, the meeting
26 shall be adjourned for a period of 30 days, or such longer period as
27 approved by the ²association² membership by approval of a motion
28 to extend the vote concerning the amendment, but in no event for
29 longer than 11 months from when the notice of the meeting was
30 sent, and all proxies or ballots received prior to the extended date
31 shall remain valid if otherwise valid under the terms of the bylaws;
32 and

33 (f) ²[if the] when an² amendment is approved, ²a copy of the
34 approved amendment shall be provided to all association members,
35 and² the association shall promptly record the ²[same] amendment²
36 in the county recording office where the bylaws were recorded.

37 (3) Paragraph (2) of this subsection shall not be construed to
38 require a vote to be held on an amendment to the bylaws that has
39 been voted on in the preceding 12 months of the initial meeting
40 request, made pursuant to subparagraph (a) of paragraph (2) of this
41 subsection.

42 (4) For the purposes of paragraph (2) of this subsection, the
43 number of total authorized votes in the association shall be based on
44 the whole number of units owned by someone entitled to
45 ²association² membership ³[in the association]³ after subtracting
46 those ³[owners] association members who are³ ineligible to vote
47 because they are not in good standing.

1 ³(5) An executive board shall not amend the bylaws of an
2 association without a vote of the association members open to all
3 association members, as provided in the association's bylaws, or
4 where the bylaws provide for no method of their amendment by a
5 vote of the association members, or only allow association members
6 to amend the bylaws through a majority vote exceeding a two-thirds
7 majority, then an association shall only amend the bylaws pursuant
8 to paragraph (2) of this subsection, except an executive board may
9 amend the bylaws under the following circumstances:

10 (a) to the extent necessary to render the bylaws consistent with
11 State, federal or local law; or

12 (b) after providing notice to all association members of the
13 proposed amendment, which notice shall include a ballot to reject
14 the proposed amendment. Other than an amendment to render the
15 bylaws consistent with State, federal, or local law, if at least 10
16 percent of association members vote to reject the amendment within
17 30 days of its mailing, the amendment shall be deemed defeated.³

18 (cf: P.L.1993, c.30, s.4)

19

20 ³[7.] 8.³ Section 5 of P.L.1993, c.30 (C.45:22A-47) is amended
21 to read as follows:

22 5. a. Irrespective of the time set for developer control of the
23 association provided in the master deed, declaration of covenants
24 and restrictions, or other instruments of creation, control of the
25 association shall be surrendered to the owners in the following
26 manner:

27 (1) Sixty days after conveyance of 25 percent of the lots,
28 parcels, units or interests, not fewer than 25 percent of the members
29 of the executive board shall be elected by the owners ^{3,3} and voting-
30 eligible tenants ³ where applicable³.

31 (2) Sixty days after conveyance of 50 percent of the lots,
32 parcels, units or interests, not fewer than 40 percent of the members
33 of the executive board shall be elected by the owners ^{3,3} and voting-
34 eligible tenants ³ where applicable³.

35 (3) Sixty days after conveyance of 75 percent of the lots,
36 parcels, units or interests, the developer's control of the executive
37 board shall terminate, at which time the owners ^{3,3} and voting-
38 eligible tenants ³ where applicable³ shall elect the entire executive
39 board; except that the developer may retain the selection of one
40 executive board member so long as there are any units remaining
41 unsold in the regular course of business.

42 b. The percentages specified in subsection a. of this section
43 shall be calculated upon the basis of the whole number of units
44 entitled to membership in the association. The bylaws of the
45 association shall specify the number or proportion of votes of all
46 units conveyed to owners that shall be required for the election of
47 ³executive³ board members. Unless the bylaws provide

1 **[otherwise]** for ³[the voting interest of each unit to be proportional
 2 to the unit's value or size] an alternate approach to allocating votes
 3 pursuant to paragraph (9) of subsection ⁴**[a.] c.**⁴ of section 6 of
 4 P.L. , c. (C.) (pending before the Legislature as this
 5 bill)³ , each unit conveyed to an owner shall be entitled to one vote
 6 regardless of the number of association members, and voting-
 7 eligible tenants ³where applicable³ , residing in a unit. A developer
 8 may surrender control of the executive board of the association
 9 before the time specified in subsection a. of this section, if the
 10 **[owners]** association members, and voting-eligible tenants ³where
 11 applicable³ , agree by a majority vote to assume control.

12 c. Upon assumption by the owners of control of the executive
 13 board of the association, the developer shall ⁴**[forthwith]**⁴ deliver
 14 to the association all items and documents pertinent to the
 15 association, such as, but not limited to, a copy of the master deed,
 16 declaration of covenants and restrictions, documents of creation of
 17 the association, bylaws, minute book including all minutes, any
 18 rules and regulations, association funds and an accounting therefor,
 19 all personal property, insurance policies, government permits, a
 20 membership roster and all contracts and agreements relative to the
 21 association ³within 60 days of ⁴**[the turnover]** that transition⁴ date³
 22 ⁴, established pursuant to this section⁴.

23 d. The association when controlled by the owners ^{3,3} and
 24 voting-eligible tenants ³where applicable,³ shall not take any action
 25 that would be detrimental to the sale of units by the developer, and
 26 shall continue the same level of maintenance, operation and
 27 services as immediately prior to their assumption of control, until
 28 the last unit is sold.

29 e. From the time of conveyance of 75 percent of the lots,
 30 parcels, units, or interests, until the last lot, parcel, unit, or interest
 31 in the development is conveyed in the ordinary course of business,
 32 the master deed, bylaws or declaration of covenants and restrictions
 33 shall not require that more than 75 percent of the votes entitled to
 34 be cast thereon be cast in the affirmative for a change in the bylaws
 35 or regulations of the association.

36 f. The developer shall not be permitted to cast any votes
 37 allocated to unsold lots, parcels, units, or interests, in order to
 38 amend the master deed, bylaws, or any other document, for the
 39 purpose of changing the permitted use of a lot, parcel, unit, or
 40 interest, or for the purpose of reducing the common elements or
 41 facilities.

42 (cf: P.L.1993, c.30, s.5)

43

44 ³**[8.] 9.**³ This act shall take effect immediately ⁴**[. 2**However,¹]
 45 except that⁴ paragraphs (1) through (9) of subsection ⁴**[a.] c.**⁴ of
 46 section 6 concerning notice, nominations, ballot content, voting,
 47 and vote distribution in executive board elections shall remain

- 1 inoperative until the first day of the third month next following
- 2 enactment and shall be applicable to each executive board election
- 3 on or after that date.³