

ASSEMBLY, No. 5043

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 14, 2019

Sponsored by:

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Clarifies assessment payment and election participation requirements in planned real estate developments.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning assessment payment and election participation
2 in planned real estate developments, and amending various parts
3 of the statutory law.

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

7
8 1. Section 3 of P.L.1977, c.419 (C.45:22A-23) is amended to
9 read as follows:

10 3. As used in this act unless the context clearly indicates
11 otherwise:

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

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

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

20 d. "Purchaser" or "owner" means any person or persons who
21 acquires a legal or equitable interest in a unit, lot, or parcel in a
22 planned real estate development, and shall be deemed to include a
23 prospective purchaser or owner. However, as used in P.L.1993,
24 c.30 (C.45:22A-43 et seq.), "owner" means any person owning a
25 unit, or an "owner" or holder of a "proprietary lease," as those terms
26 are defined under subsections i. and k. of section 3 of "The
27 Cooperative Recording Act of New Jersey," P.L.1987, c.381
28 (C.46:8D-3), if the development is a cooperative. This definition
29 shall not require an association to offer election participation or
30 voting rights for a person with non-payer status, or allow an
31 association to impose responsibilities on a person with non-payer
32 status to pay assessments or other charges.

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

34 f. "Commissioner" means the Commissioner of Community
35 Affairs.

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

37 h. "Planned real estate development" or "development" means
38 any real property situated within the State, whether contiguous or
39 not, which consists of or will consist of, separately owned areas,
40 irrespective of form, be it lots, parcels, units, or interest, and which
41 are offered or disposed of pursuant to a common promotional plan,
42 and providing for common or shared elements or interests in real
43 property. This definition shall not apply to any form of
44 timesharing.

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.

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

5 This definition shall be construed liberally to effectuate the
6 purposes of this act.

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

12 j. "Advertising" means and includes the publication or causing
13 to be published of any information offering for disposition or for
14 the purpose of causing or inducing any other person to purchase an
15 interest in a planned real estate development, including the land
16 sales contract to be used and any photographs or drawings or artist's
17 representations of physical conditions or facilities on the property
18 existing or to exist by means of any:

- 19 (1) Newspaper or periodical;
- 20 (2) Radio or television broadcast;
- 21 (3) Written or printed or photographic matter;
- 22 (4) Billboards or signs;
- 23 (5) Display of model houses or units;
- 24 (6) Material used in connection with the disposition or offer of
25 the development by radio, television, telephone or any other
26 electronic means; or
- 27 (7) Material used by developers or their agents to induce
28 prospective purchasers to visit the development, particularly
29 vacation certificates which require the holders of such certificates to
30 attend or submit to a sales presentation by a developer or his agents.

31 "Advertising" does not mean and shall not be deemed to include:
32 Stockholder communications such as annual reports and interim
33 financial reports, proxy materials, registration statements, securities
34 prospectuses, applications for listing securities on stock exchanges,
35 and the like; all communications addressed to and relating to the
36 account of any person who has previously executed a contract for
37 the purchase of the subdivider's lands except when directed to the
38 sale of additional lands.

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

44 l. "Blanket encumbrance" means a trust deed, mortgage,
45 judgment, or any other lien or encumbrance, including an option or
46 contract to sell or a trust agreement, affecting a development or
47 affecting more than one lot, unit, parcel, or interest therein, but does

- 1 not include any lien or other encumbrance arising as the result of
2 the imposition of any tax assessment by any public authority.
- 3 m. "Conversion" means any change with respect to a real estate
4 development or subdivision, apartment complex or other entity
5 concerned with the ownership, use or management of real property
6 which would make such entity a planned real estate development.
- 7 n. "Association" means an association for the management of
8 common elements and facilities, organized pursuant to section 1 of
9 P.L.1993, c.30 (C.45:22A-43).
- 10 o. "Executive board" means the executive board of an
11 association, as provided for in section 3 of P.L.1993, c.30
12 (C.45:22A- 45).
- 13 p. "Unit" means any lot, parcel, unit or interest in a planned
14 real estate development that is, or is intended to be, a separately
15 owned area thereof.
- 16 q. "Association member" means the owner of a unit within a
17 planned real estate development, or a unit's tenant to the extent that
18 the governing documents of the planned real estate development
19 permit tenant membership in the association, and the developer to
20 the extent that the development contains unsold lots, parcels, units,
21 or interests pursuant to subsection c. of section 1 of P.L.1993, c.30
22 (C.45:22A-43). This definition shall not be construed to provide
23 the developer a different transition obligation than that required
24 pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), or to require
25 that the developer is allowed to vote in executive board elections.
26 This definition shall not require an owner with non-payer status to
27 be an association member.
- 28 r. "Good standing" means the status - solely with respect to
29 eligibility to (1) vote in executive board elections, (2) vote to
30 amend the bylaws, and (3) nominate or run for any membership
31 position on the executive board - applicable to an association
32 member who is current on the payment of common expenses, late
33 fees, interest on unpaid assessments, legal fees, or other charges
34 lawfully assessed, and which association member has not failed to
35 satisfy a judgment for common expenses, late fees, interest on
36 unpaid assessments, legal fees, or other charges lawfully assessed.
37 An association member is in good standing if he is in full
38 compliance with a settlement agreement with respect to the
39 payments of assessments, legal fees or other charges lawfully
40 assessed, or the association member has a pending, unresolved
41 dispute concerning charges assessed which dispute has been
42 initiated: through a valid alternative to litigation pursuant to
43 subsection c. of section 2 of P.L.1993, c.30 (C.45:22A-44); through
44 subsection (k) of section 14 of the "Condominium Act," P.L.1969,
45 c.257 (C.46:8B-14); or through a pertinent court action.
- 46 s. "Voting-eligible tenant" means a tenant of a unit within a
47 planned real estate development in which:

1 (1) the governing documents of the development permit the
2 tenant's participation in executive board elections, and

3 (2) either (a) the development has allowed tenant participation
4 in executive board elections as a standard practice prior to the
5 effective date of P.L.2017, c.106 (C.45:22A-45.1 et al.), or (b) the
6 owner has affirmatively acknowledged the right of the tenant to
7 vote through a provision of a written lease agreement or separate
8 document.

9 This definition shall not be construed to affect voting as an agent
10 of the owner through a proxy or power of attorney. Pursuant to
11 subsection d. of this section, if the development is a cooperative
12 corporation, then, an "owner" or holder of a "proprietary lease," as
13 those terms are defined under subsections i. and k. of section 3 of
14 "The Cooperative Recording Act of New Jersey," P.L.1987, c.381
15 (C.46:8D-3), is also an "owner," not a tenant, for the purposes of
16 P.L.1993, c.30 (C.45:22A-43 et seq.).

17 t. “Non-payer status” means the status of an owner of real
18 property within a planned real estate development, provided that
19 with respect to the real property:

20 (1) the transition from developer control occurred prior to the
21 effective date of P.L.2017, c.106 (C.45:22A-45.1 et al.); and

22 (2) the association did not have authority to compel payment of
23 assessments or other charges immediately prior to the effective date
24 of P.L.2017, c.106 (C.45:22A-45.1 et al.).

25 (cf: P.L.2017, c.106, s.2)

26

27 2. Section 2 of P.L.1993, c.30 (45:22A-44) is amended to read
28 as follows:

29 2. a. Subject to the master deed, declaration of covenants and
30 restrictions or other instruments of creation, the association may do
31 all that it is legally entitled to do under the laws applicable to its
32 form of organization.

33 b. The association shall exercise its powers and discharge its
34 functions in a manner that protects and furthers the health, safety
35 and general welfare of the residents of the community.

36 c. The association shall provide a fair and efficient procedure
37 for the resolution of disputes between individual unit owners and
38 the association, and between unit owners, which shall be readily
39 available as an alternative to litigation.

40 d. The association may assert tort claims concerning the
41 common elements and facilities of the development as if the claims
42 were asserted directly by the unit owners individually.

43 e. The association may not compel an owner with non-payer
44 status to pay assessments or other charges or be a member of the
45 association.

46 (cf: P.L.1993, c.30, s.2)

1 3. Section 1 of P.L.2017, c.106 (C.45:22A-45.1) is amended to
2 read as follows:

3 1. The Legislature finds and declares that:

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

9 b. The owners and residents of these communities often benefit
10 from minimized maintenance responsibilities and greater assurances
11 that neighboring properties will follow a predictable development
12 scheme;

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

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

23 e. The supplement to "The Planned Real Estate Development
24 Full Disclosure Act" ("PREDFDA"), P.L.1977, c.419 (C.45:22A-21
25 et seq.), specifically, P.L.1993, c.30 (C.45:22A-43 et seq.),
26 provided all owners and residents in common interest residential
27 communities with specific rights and protections. These rights and
28 protections exist regardless of whether a developer established the
29 community prior to the effective date of PREDFDA. The
30 supplement was not specific in declaring that all unit owners were
31 members of the association or in recognizing that, along with
32 certain specific tenant residents, all unit owners were entitled to
33 participate fully in elections of members of the executive board;

34 f. Unit owners living in community associations should have
35 the right to nominate candidates, run for, freely elect, and be elected
36 to the executive boards that govern the communities; and

37 g. It is necessary and in the public interest for the Legislature
38 to enact legislation to amend PREDFDA in order to:

39 (1) Establish that all unit owners, with limited exception, are
40 members of the association and provide basic election participation
41 rights for certain residents of common interest communities,
42 including the right of resident owners in good standing to nominate
43 any unit owner in good standing as a candidate for any position on
44 the executive board, run, appear on the ballot, and be elected to any
45 executive board position, in every executive board election, and for
46 those rights to apply regardless of the date of a community's
47 establishment; and

1 (2) Establish that, except under the very limited exceptions
2 provided, a person may not serve on an executive board unless
3 elected through a process consistent with the provisions of
4 PREDFDA.

5 (cf: P.L.2017, c.106, s.1)

6

7 4. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 This bill clarifies the scope of the assessment payment
13 responsibilities and election participation rights of owners in
14 planned real estate developments.

15 The associations of certain planned real estate developments in
16 the State have interpreted that the provisions of P.L.2017, c.106
17 (C.45:22A-45.1 et al.) may impose new responsibilities on certain
18 property owners to pay assessments and other charges to the
19 association. This bill clarifies that if a person owns real property,
20 for which an association did not have authority to compel payment
21 of assessments or other charges prior to the effective date of
22 P.L.2017, c.106 (C.45:22A-45.1 et al.), then following the effective
23 date of that law, the person shall not:

24 (1) be required to pay assessments or other charges to the
25 association;

26 (2) be provided with membership in the association; or

27 (3) be entitled to election participation or voting rights in the
28 association.

29 The bill does not apply to real property that had not yet
30 transitioned from developer control prior to the effective date of
31 P.L.2017, c.106 (C.45:22A-45.1 et al.).