ASSEMBLY, No. 1443

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

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SYNOPSIS

The "Owners' Rights and Obligations in Shared Ownership Communities Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

(Sponsorship Updated As Of: 9/14/2010)

AN ACT concerning rights and obligations of homeowners living in shared ownership communities, amending various parts of the statutory law, and supplementing Title 46 of the Revised Statutes.

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

1. (New section) This act shall be known and may be cited as the "Owners' Rights and Obligations in Shared Ownership Communities Act."

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

a. Homeowners' associations formed to manage property shared by all homeowners, whether that property be in condominiums, planned communities, or cooperatives, function as quasi-governments, often providing services in lieu of governmental services, levying assessments and imposing fines, and, through their control of maintenance and assessment levels, rulemaking powers, and enforcement efforts, have substantial power to affect both the quality of life and financial health of the individual homeowners comprising their membership.

b. Current statutes are ineffective to compel homeowners' associations to treat fairly the owners of homes in planned communities or the holders of proprietary leases in cooperatives, in the manner of fair treatment required for condominium owners. The "Condominium Act," P.L.1969, c. 257 (C.46:8B-1 et seq.) requires developers and associations to clearly recognize the coexisting interests of each individual homeowner in the commonly-owned facilities of a condominium, by requiring the consent of a majority of the owners prior to making changes in the governing documents. That act also provides "quasi-governmental" powers to condominium boards to impose fines on members, and to place liens on their individual homes. Similar protections and powers have not been enunciated in the statutes for owners of homes or holders of proprietary leases in planned communities and cooperatives, respectively. The Legislature attempted to expand the law to apply to all types of homeowners' association through the enactment of P.L.1993, c.30, but that act has proven ineffective in making sure that owners in all types of these communities are treated fairly and democratically by their governing boards.

c. The unilateral manner in which a developer is permitted under the law to make all decisions for an association until a certain level of sales of homes have been reached may serve to protect the developer's investment in the community while he is selling, but

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 <u>thus</u> is new matter.

does not serve an association well when it is required to act as a governing board and operate in a democratic and fair manner, and in the best interests of all of the owners as required by statute. While protecting the interests of both, there is a need to clearly separate in the law (1) the interests and role of a developer of a shared ownership community from (2) the interests and role of the association formed to represent the collective shared property interests of owners of individual properties within such communities, and (3) a need to provide standards to association governing boards to foster transparent governance.

d. There is a further need to update New Jersey's laws to provide improved, relevant disclosure to a prospective purchaser as to the exact nature of what is being purchased, and a clear statement of their rights and responsibilities as a member of a homeowners' association. There is a need to standardize certain information, and to allow developers to submit it in an electronic format for an expedited review by the State.

e. There is a need to eliminate exemptions from required disclosures by developers to purchasers in smaller shared ownership communities.

f. In order to minimize State involvement in the affairs of homeowners' associations, and in order to reduce the need for litigation by members of associations, there is a need to create a truly objective, reliable, and low cost system of dispute resolution for shared ownership communities which will be overseen and provided by experienced neutral parties, with adequate due process protections.

g. There is a need to foster democratic governance in community associations in the following areas, including, but not limited to, the regulation of elections, budget adoption, access to association records, open meetings, education of owners and governing board members, and to raise awareness of the rights and obligations of owners and those owners serving their communities as governing board members. The Legislature declares that it is necessary and in the public interest to establish an independent Commission on Shared Ownership Communities, comprised of individuals living in and providing services to such communities, to function as a State liaison for such communities. The commission will promote an equitable balance between the interests of association governing boards, developers, owners, and residents in these communities, through the provision of information and the establishment of governance standards for such associations, and will serve as a coordinating entity for the provision of alternative dispute resolution services and enforcement of statutory rights.

3. (New section) As used in this act:

"Association," "community association" or "homeowners' association" means any legal entity, incorporated or unincorporated, that is responsible for the governance over common property of a shared ownership community, regardless of whether the association was required to be formed pursuant to any law or ordinance.

"Association documents" means governing documents.

"Commission" means the Commission on Shared Ownership Communities established pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

"Common ownership community" means a shared ownership community.

"Cooperative housing project" means any system of land ownership and possession in which the fee title to the land and structure is owned by a corporation in which the shareholders of that corporation each also have a long term proprietary lease or other long term arrangement of exclusive possession for a specific unit of occupancy space located within the same structure.

"Declaration" means the recorded document or documents containing the servitudes that create and govern the common ownership community.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Dispute" means any disagreement between two or more parties that conforms to the requirements of section 6 of P.L. , c. (C.) (pending before the Legislature as this bill).

"Executive director" means the executive director of the Commission on Shared Ownership Communities.

"Governing body" or "governing board" means the council of unit owners, board of directors, trustees, or any other body authorized by a governing document to adopt binding rules or regulations.

"Governing documents" means the declaration and other documents, such as a deed, the articles of incorporation or articles of association, bylaws, and rules and regulations that govern the operation of an association, or determine the rights and obligations of the members of the shared ownership community.

"Member" means the owner of an individually-owned property bound by a servitude described in an association document to contribute to maintenance of common property or to pay mandatory dues to the association. In the case of a shared ownership community in which membership in the association and the obligation to pay assessments are independent, the term member shall mean an owner who is bound by a servitude described in an association document to contribute to maintenance of common property or to pay mandatory dues to the association.

"Owner" means the individual owner of a residence in a shared ownership community, and includes a unit owner in a

condominium, a lot owner in a homeowners' association, and a holder of a proprietary lease in a cooperative housing project.

“Owners’ coordinating council” means the group to which owners may be elected to serve , other than the governing board.

“Party” means a developer, an owner, a governing body, or an occupant of a dwelling unit in a shared ownership community.

“Period of developer control” means the period of time during which a developer has a controlling voting interest in the decisions of the governing board of an association pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), prior to the developer’s interests terminating.

“Public Advocate” means the commissioner of the Department of the Public Advocate.

“Shared ownership community” means a community in which individual property owners are bound by a servitude in documents required to be recorded for real property, which servitude requires support of the shared or commonly-owned property, and the benefit and use of the shared property is appurtenant to the individually-owned property. A shared ownership community may consist of a fee-simple estate, a leasehold, or an easement, unless the responsibility for maintenance of such easement is determined by the extent of actual use, and it may be any kind of property held or enjoyed in common by owners of the individually owned property. The term shall include, but not be limited to:

a development subject to a declaration, master deed or other document enforced by an association;

a residential condominium, as that term is defined in section 3 of P.L.1969, c.257 (C.46:8B-3 et seq.); and

a cooperative housing project.

4. (New section) This act is intended to supplement the law on community associations, including, but not limited to, the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), the “Horizontal Property Act,” P.L.1963, c.168 (C.46:8A-1 et seq.), “The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.), P.L.1993, c.30 (C.45:22A-43 et seq.), and any other law hereinafter enacted regulating shared ownership communities and associations. To the extent that any other law conflicts with the provisions of P.L. , c. (C.) (pending before the Legislature as this bill), the laws shall be harmonized to the extent possible; however, in the event of any unreconciled conflicts, the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) shall control.

5. (New section) a. The Legislature finds it is necessary and in the public interest to form a special State entity to:

(1) foster proper operation of homeowners' associations, condominium associations, and cooperative housing corporations;

(2) promote education, public awareness and association membership understanding of the rights and obligations of living in a shared ownership community;

(3) reduce the number and divisiveness of disputes, and encourage informal resolution of disputes;

(4) maintain property values and quality of life in these communities;

(5) assist and oversee in the development of coordinated community and government policies, programs, and services which support these communities; and

(6) prevent potential public financial liability for repair or replacement of shared ownership community facilities.

b. There is established in, but not of, the Department of Law and Public Safety, the Commission on Shared Ownership Communities. The commission shall serve as the State liaison for citizens residing in shared ownership communities, and shall provide educational and reference materials as requested by an association or its members. The commission, in conjunction with the director, shall adopt governance standards for shared ownership communities and their governing boards and managers, in accordance with P.L. , c. (C.) (pending before the Legislature as this bill), to promote fair and democratic governance and good business practices within such communities, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.). The commission shall monitor requests for alternative dispute resolution services, and, working in conjunction with the Office of Consumer Protection within the Division of Consumer Affairs in the Department of Law and Public Safety, shall coordinate and facilitate the resolution of disputes and enforce statutory rights in such communities.

c. The commission shall appoint an executive director of the commission and such other personnel as may be deemed necessary. The executive director and professional staff shall serve at the pleasure of the commission and shall receive such compensation as provided by law. The executive director and professional staff, and all expenses of the commission, shall be paid from the portion of the registration fees required to be collected and allocated pursuant to section 7 of P.L.1977, c.419 (C.45:22A-27), and directed to be used for the purposes of the commission pursuant to P.L. , c. (C.) (pending before the Legislature as this bill). Members of the commission shall not be paid compensation, but shall be entitled to be reimbursed for reasonable travel and meal expenses, not to exceed $100 per occurrence.

d. The Attorney General shall provide legal representation to the commission.

e. The commission shall be comprised of 12 voting members. Eleven public members shall be recommended for appointment by the Attorney General and appointed by the Governor, as follows:

(1) One member shall be a resident of a shared ownership community containing fewer than 26 units;

(2) One member shall be a resident of a shared ownership community located in the northern region of the State;

(3) One member shall be a resident of a shared ownership community located in the central region of the State;

(4) One member shall be a resident of a shared ownership community located in the southern region of the State;

(5) One member shall be a resident of a cooperative housing corporation;

(6) One member shall be a resident of an age-restricted shared ownership community; and

(7) One member shall be a resident of a shared ownership community containing more than 499 units.

Of the members selected under subparagraphs (1) through (7), no more than three may include current members or former members of association governing boards;

(8) One member shall be selected from developers of shared ownership communities.

(9) Two members shall be selected from persons who are members of professions associated with shared ownership communities; one shall be an attorney, and one shall be a professional community association manager; and

(10) One member who shall be a certified public accountant.

(11) The Public Advocate, or the Public Advocate's designee, shall serve as an ex-officio voting member of the commission , and shall represent the rights and interests of low and moderate income households residing in dwelling units reserved by deed restriction for occupancy by such households within shared ownership communities.

f. Each public member shall serve a three-year term. Of the members first appointed, one-third shall be appointed for one-year terms, one-third shall be appointed for two-year terms, and one-third shall be appointed for three-year terms. A member shall not serve more than two consecutive full terms. A member appointed to fill a vacancy shall serve the rest of the unexpired term. Members shall continue in office until their successors are appointed and qualified.

g. All public members shall serve at the pleasure of the Governor.

h. The members of the commission shall elect annually a chairman of the commission. The commission shall meet at the call of the chair as often as required to perform its duties, but shall meet at least quarterly. A majority of the voting members shall be a

quorum for the transaction of business, and a majority of the voting members present at any meeting may take any official action.

i. The Director of the Division of Consumer Affairs shall arrange for offices and supplies for staff of the commission as appropriate, and shall be entitled to reimbursement for all costs incurred in complying with the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) from the funds available from the fees collected from developers of planned real estate developments pursuant to subsection e. of section 7 of P.L.1977, c. 419 (C.45:22A-27).

j. The commission shall submit annually by March 1 of each year, a report to the Legislature and the Governor covering its activities of the previous calendar year, summarizing its activities, needs, and recommendations, and the extent to which the goals of P.L. , c. (C.) (pending before the Legislature as this bill) are being met, in the manner provided under section 2 of P.L.1992, c.164 (C.52:14-19.1).

6. (New section) Any party in a shared ownership community may request alternative dispute resolution services from the Commission on Shared Ownership Communities established pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), in accordance with the provisions of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill).

For the purposes of this section, “dispute” shall be interpreted broadly to mean any matter for which a resolution is sought which is connected in some relevant manner to a shared ownership community or its association.

a. Prior to the filing of a request for dispute resolution with the Commission on Shared Ownership Communities, a party shall make a good faith effort to utilize the dispute resolution procedures required to be adopted by their respective community association pursuant to section 2 of P.L.1993, c.30 (C.45:22A-44), or any reallocation thereof, and section 14 of P.L.1969, c.257 (C.46:8B-14). If the dispute resolution services provided or arranged by the association do not resolve the dispute in the view of any of the parties, then any of those parties may file a request with the Commission on Shared Ownership Communities. The commission shall process all requests for dispute resolution in accordance with rules to be promulgated by the commission and the Attorney General, in accordance with the provisions of P.L. , c. (C.) (pending before the Legislature as this bill).

b. In the event a party alleges that a violation of statutory law, or any regulations promulgated thereto, or that a violation of association governing documents, has occurred by a governing board or a governing board member of an association, then that

party may submit a request for review and enforcement consideration pursuant to section 8 of P.L. , c. (C.) (pending before the Legislature as this bill).

c. Prior to filing a lien for unpaid fines assessed upon an owner, an association shall be required to submit the matter for review through arbitration arranged by the commission through the Division of Consumer Affairs in the Department of Law and Public Safety, in accordance with section 9 the provisions of P.L. , c. (C.) (pending before the Legislature as this bill.). Only those liens based on fines imposed which are submitted in accordance with this section and section 9 shall be eligible for recording with the county recording office.

7. (New section) The Executive Director of the Commission on Shared Ownership Communities shall review all requests for dispute resolution services which are received by the commission, and shall:

a. issue a letter opinion advising the requester of available options or solutions, or the applicability of the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) to a particular set of facts, in lieu of the provision of alternative dispute resolution services (ADR);

b. arrange for ADR services to be provided within a reasonable period of time through the dispute resolution programs of the Division of Consumer Affairs in the Department of Law and Public Safety, in accordance with regulations to be promulgated by that department;

c. arrange for a hearing to proceed in accordance with section 8 of P.L. , c. (C.) (pending before the Legislature as this bill) for an alleged violation of regulatory or statutory law; provided, however, that the executive director may arrange for ADR services in lieu of a hearing for allegations of violations of governing documents, at his discretion;

d. arrange for a special hearing panel for claims concerning construction deficiencies; or

e. request the commission’s preliminary review of any request which the executive director deems frivolous, unreasonable, or lacking any basis in fact, prior to arranging for ADR services, or submitting a matter for review for enforcement action. If the commission deems the request frivolous, unreasonable, or lacking any basis in fact, it shall reject the request.

The executive director of the commission shall be authorized to act on behalf of the commission to process initial claims and make arrangements for the provision of dispute resolution services or hearings. The executive director of the commission shall also be authorized to act on behalf of the commission to impose a stay on

the actions of any governing board pending the processing and resolution of a request.

8. (New section) a. The executive director shall arrange for a hearing for allegations of a violation of statutory or regulatory law, or may arrange for a hearing for allegations of violations by members of the governing board of the governing documents of an association, within 10 business days for claims of election fraud, and 90 calendar days of the receipt of all other types of requests, as follows:

The executive director of the commission shall arrange for the services of an arbitrator through the local consumer affairs offices of the Division of Consumer Affairs, through any other dispute resolution programs of the division, or alternatively, by interdepartmental agreement, may arrange for the services of the Department of the Public Advocate, to conduct the hearing which shall be a binding arbitration, or, if a majority of its members approves, the commission may convene a hearing panel, and may make determinations with at least five of its members participating.

b. At the hearing authorized to be conducted pursuant to this section, the panel or arbitrator, as the case may be, shall give full hearing to both the complaint of the resident or residents and to any evidence in contradiction or mitigation that the association, if present or represented and offering such evidence, may present. At the conclusion of the hearing, the arbitrator or panel shall determine, if required from the circumstances of the case:

(1) whether the governing documents are deficient under the law, or violate any provision of P.L. , c. (C.) (pending before the Legislature as this bill) or any other statute or regulation relevant to homeowners' associations;

(2) whether the actions of any members of the governing board or its employees or agents violate statutory law;

(3) whether the governing documents were violated by any party;

or

(4) under a claim of election fraud, whether the election proceedings comported with the standards promulgated by the commission, and if they did not, should the election be voided, and a new election ordered.

c. (1) On all matters the commission shall have the authority, on the basis of the arbitrator's findings or the hearing panel's determination, to install a temporary governing body in the event it is determined that no properly-elected members are serving on the governing body.

(2) The commission shall also have the powers necessary to reform deficient governing documents that do not comply with the provisions of P.L. , c. (C.) (pending before the Legislature

as this bill), or any other State or federal law to make those documents comply.

(3) The commission shall have the power to impose fines on governing board members, or a governing board's employees or agents, equal to those powers granted by the Legislature to governing boards permitting them to impose fines on members of associations.

(4) The commission shall have the power to stay a lien filing for an assessment, attorney's fees, or late fees if it is determined through either an ADR or a hearing that the basis for the lien is not warranted or on the basis that the association has not registered with the commission; the commission shall also have the power to order a release of lien to be prepared and filed by an association.

(5) The commission may:

(a) petition the court to appoint a receiver of a shared ownership development in any case in which the developer has abandoned the development;

(b) in the case of a shared ownership community which has more than 50 percent of its units foreclosed upon, appoint a governing board from the members of the association who are not banks, mortgagees or other lending institutions which hold the units through foreclosures, and appoint a property manager, which appointment power shall terminate upon the owners, other than foreclosing banks or mortgages, holding a 51 percent voting interest in the association, electing their own governing board and contracting on their own behalf for management services.

(c) appoint to the governing board of an association a temporary member to replace the voting interests of the developer, in the event the developer has filed for bankruptcy.

(d) appoint a temporary property manager for an association that has a dispute under review, when that association has no properly elected governing board members and no property manager, which appointment shall be effective until valid elections are held or until the community terminates in accordance with law.

d. The commission, in conjunction with the Director of the Division of Consumer Affairs and the Director of the Division of Codes and Standards in the Department of Community Affairs, shall empanel a select advisory panel for claims concerning construction defects in common elements. The panel should be comprised, to the extent feasible, of individuals with significant knowledge in the construction of residential housing and other structures, and may include any of the following:

(1) members of a county construction board of appeals;

(2) members of the code advisory board in the Department of Community Affairs; or

(3) local code enforcement officials;

but shall not include any officials or individuals who were or are serving in a capacity which gave or gives them responsibility in any manner for oversight of the specific construction which is the subject of the dispute resolution.

Upon receiving a claim from an owners' coordinating council concerning construction deficiencies or warranty issues pertaining to common elements of a shared ownership community, the executive director of the commission shall arrange for arbitration for claims of construction defects in the common elements of a shared ownership community and shall be authorized to utilize the expertise of the select advisory panel to make a determination of developer negligence or liability.

e. Hearings under P.L. , c. (C.) (pending before the Legislature as this bill may be conducted:

(1) by the division at the local consumer affairs office servicing the region in which the homeowners' association is located;

(2) by the commission with at least five of its members participating, if no local panel is available to the division; or

(3) by an arbitrator selected by the director.

f. (1) If any person summoned to be examined pursuant to this section shall refuse to be sworn, or to affirm, or to testify, or to answer a proper question, or to produce the books, papers, documents or tangible things demanded, or shall otherwise engage in misconduct, the Superior Court may, on motion, and after affording that person the opportunity to be heard, punish that person in the same manner as like failure is punishable in a case pending in the court.

(2) Orders of an arbitrator under this section, if binding arbitration has been selected, shall be binding upon the parties. The failure of any person to obey a binding order of the arbitrator issued in accordance with this section shall be punishable as contempt of court by the court in the same manner as like failure is punishable in an action pending in the court when the matter is brought before the court by motion filed by the Attorney General and supported by affidavit stating the circumstances. In the case of a finding by the commission that an officer or trustee of the governing body knowingly or willfully failed to follow the governing documents, such officer or trustee shall be deemed to have vacated their position on the governing body, and a new election for his or her position shall be held within 90 days of the finding.

9. (New section) a. The commission shall arrange for arbitration on all proposed lien filings based on fines imposed within 15 days of submission by an association. A determination to approve or disapprove an association's request for lien filing on the basis of fines imposed shall be made no later than 60 days from the date of the claim submission. Extensions may be granted to any

party to submit additional information; however, the commission shall have the discretion to disapprove a lien filing upon the repeated failure of an association to provide requested information to either entity.

b. The director shall establish expedited procedures to approve or disapprove lien filings for unpaid fines, and shall establish the forms required to be filed with the county clerk to authorize such lien filing when approved pursuant to this section.

c. Unless otherwise specified in P.L. , c. (C.) (pending before the Legislature as this bill), all hearings and alternative dispute resolution procedures shall be conducted in accordance with procedures adopted by the agency providing the services, and relevant applicable law. Dispute resolution may be handled as a binding arbitration at the discretion of the commission; if so, an appeal may be made only to the extent allowed for appeals made under binding arbitration. An arbitrator shall make a final determination in any matter no later than 90 days from the last hearing date, but may grant reasonable continuances of the hearing in order to fully investigate the matter.

10. (New section) Upon the adoption of the regulations required to be promulgated pursuant to section 14 of P.L. , c. (C.) (pending before the Legislature as this bill), every association as defined under section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) shall complete and submit an annual informational disclosure to the Commission on Shared Ownership Communities established pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), on such form and in such a manner as the commission shall require. Thereafter, an association shall be required to disclose these items annually to the commission, in accordance with its regulations. There shall be no fees required of any association, or any member of an association, for submitting such information.

At a minimum, the disclosure form shall require:

The name, location, and address of the shared interest community, and the number of dwelling units located therein;

A statement as to whether the association is incorporated, and the location of the corporate agent;

The name of the most recently-elected officers or trustees of the association, the length of their terms of office, and contact information, including mailing addresses for each of them;

The name of the agent for service of process of the association;

The name of the developer of the community, if still actively selling or renting in the community, and the developer’s current address, if known;

Any additional information that the commission may deem useful to carry out its purposes under P.L. , c. (C.) (pending before the Legislature as this bill).

11. (New section) a. It shall be unlawful under P.L.1960, c.39 C.56:8-1 et seq.) for an association which has been formed to manage a shared ownership community to violate the provisions of P.L. , c. (C.) (pending before the Legislature as this bill.)

b. It shall be unlawful under P.L.1960, c.39 (C.56:8-1 et seq.) for a developer of a shared ownership community to violate the provisions of P.L. , c. (C.) (pending before the Legislature as this bill).

c. The Alternative Dispute Resolution Program established by the Division of Consumer Affairs in the Department of Law and Public Safety shall be expanded to include dispute resolution services to homeowners and residents of shared ownership communities. The expanded program shall permit trained volunteers who are also residents or professional employees of such communities to participate in the provision of dispute resolution, provided that for each dispute at least three volunteers shall be utilized, and no more than one of them shall be an employee of, or sit as a current member of, a homeowners' association governing board, or has served as a member of a homeowners' association governing board within the immediate preceding two years. A property manager currently employed by an association shall not participate as a dispute resolution volunteer for that association.

d. The director shall promulgate such rules and regulations as necessary to effectuate this section pursuant to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

12. (New section) a. The activities of the Commission on Shared Ownership Communities shall be funded from the fees imposed upon developers upon the registration of planned developments pursuant to section 7 of P.L.1977, c.419 (C.45:22A-27), as amended by P.L. , c. (C.) (pending before the Legislature as this bill).

b. In the event that these fees described in section a. of this section are insufficient to defray the costs associated with the provision of dispute resolution services under the provision of P.L. , c. (C.) (pending before the Legislature as this bill), the provider of dispute resolution services may charge an association a reasonable fee to defray the costs of dispute resolution services provided, or administrative costs incurred in connection with, the provision of those services.

c. Dispute resolution services shall be deemed to be provided upon the agreement of the commission to hear, or arrange for mediation or arbitration. Those associations that have not provided

information as required pursuant to section 10 of P.L. , c. (C.) (pending before the Legislature as this bill) as of the date dispute resolution services are deemed provided shall do so immediately prior to the provision of services.

13. (New section) This section shall be known and may be cited as the "Bill Of Rights And Responsibilities For Owners In Shared Ownership Communities."

a. The commission shall publish the following and post on its Internet site, the following information, as set off by quotation marks:

"Bill Of Rights And Responsibilities For Owners In Shared Ownership Communities.

As a member of a shared ownership community association:

(1) You have the right to be informed before buying a home in a shared ownership community of the community's governing documents, financial condition, assessments and fees, and its rules and regulations. You have the duty to ask for this information from the seller, to read and understand it, and to obey the rules if you buy the home; You have the right to notify the Division of Consumer Affairs in the Department of Law and Public Safety if a developer has not furnished you with this information;

(2) You have the right to be treated with respect by your neighbors and by the governing board members and managers of your community. You have the duty to treat your neighbors, directors, officers, and managers with respect.

(3) You have the right to privacy consistent with the law and the reasonable rules of the community. You (and your tenants, if any) have the duty to respect the rights of your neighbors to enjoy their privacy.

(4) You have the right to prompt and effective service from your association's governing board members or management. You have the duty to pay your legitimately imposed assessments on time.

(5) You have the right to vote in elections and to vote on the adoption of new rules, as permitted under State law; and to vote on the assessments, when permitted by law or community rules. You have the duty to inform yourself of the issues, and to vote on them.

(6) You have the right to vote to approve the sale of any of the common elements or common property of the community as provided under State law; and you have the right to vote to approve the construction of any new common facilities or common elements if those facilities were not listed on the master deed or declaration as "to be built" when you purchased your individual property in the community, as provided under State law. You have the duty to participate in voting when required for association actions.

(7) You have the right to fair elections and to be nominated for and to run for office. You have the duty to make sure that elections are fair and that candidates for whom you vote are qualified.

(8) You have the right to honest and reasonable government from your elected board and the managers it chooses. You have the duty to participate in the affairs of the community by volunteering your time and talents as needed and by informing yourself of the board's activities.

(9) You have the right to be informed of your community's acts and financial condition, including balances in reserve accounts, and to inspect, and make copies of, its books and records. You have the duty to know and understand its rules, and to provide to the community any information required by the rules, unless prohibited by law.

(10) You have the right to meet with your fellow owners to discuss the community's and the board's conduct, free of charge. You have the duty to obtain the information necessary to form a fair and balanced opinion, and to promote positive solutions for the good of the community.

(11) You have the right to fair treatment if you are charged with a violation of the community rules. This includes the right to know what rule is involved and to a fair hearing, and a right to appeal any violation to the Commission on Shared Ownership Communities. You have the duty to respond to any such claim promptly and honestly, and to cooperate in good faith and in a civilized manner in an effort to resolve the dispute.

(12) If you are unable to resolve disputes directly with your community, you have the right to bring your dispute to the Commission on Shared Ownership Communities, where it may be resolved without the need for expensive litigation. You have the duty first to bring your dispute to the attention of the community's governing board and to allow the board a fair opportunity to respond, and to use whatever dispute resolution procedures your community requires, provided those procedures comport with State law; if you bring your dispute to the commission you have the duty to cooperate in the commission's complaint process and to treat other parties with respect.

(13) You have the right to architectural and other rules (such as parking or pets) that are properly adopted and published, that are clear and reasonable, and that are fairly and consistently enforced. You have the right to seek changes to any rules that you believe are obsolete or inappropriate. You (and your tenants, if any) have the duty to obey the rules, to follow the proper procedures to obtain any required permission for modifications you wish to make, and to keep the area around your home clean and free of trash, pests, and other nuisances.”

b. Nothing in this section shall be construed as permitting the rights enumerated in this section to be waived in any manner by any association or owner.

c. Nothing in this section shall be construed as prohibiting the waiver of any constitutional rights by an owner, provided that any waiver so executed shall be in writing and shall contain documentation that the owner has:

(1) a specific knowledge of the constitutional right being waived; and

(2) made an intentional decision to abandon the protection of the constitutional right.

14. (New section) a. Within 120 days of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the commission shall adopt, and from time to time review for amendment, minimum standards for conduct for shared ownership community associations, which shall include, but not be limited to, all the requirements for such associations as provided in P.L. , c. (C.) (pending before the Legislature as this bill) on such matters as elections, including recall elections, voting, access to records, maintenance and retention of records, minutes, association-provided dispute resolution services, bidding, audits, and conflicts of interests. The commission may adopt more specific requirements for each of these matters than those required pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), provided that the standards adopted comport with the intent of the Legislature to foster democracy and fairness in matters of governance by an association, and protect the rights of owners to vote on matters guaranteed under P.L. , c. (C.) (pending before the Legislature as this bill).

b. The commission shall establish a program and materials for the training of owners who are elected to serve on the governing boards of shared ownership communities. At least two hours of training shall be mandatory on the part of board members, which shall be completed no later than 180 days prior to the expiration of the member's term of office. The program shall provide guidance on all of the information relevant to a board member effectively serving at the helm of their community, and shall include good business practices, model record keeping procedures, legal requirements for boards, the making of a budget and maintaining reserve accounts, information on various State entities available to assist the board, and any other information the commission deems relevant. The commission shall have the authority to remove a board member who does not complete the training required pursuant to this section.

c. The commission shall adopt forms and procedures for the disclosure of information by associations as required pursuant to

section 10 of P.L. , c. (C.) (pending before the Legislature as this bill).

d. The commission shall maintain an Internet site to effectuate the purposes of P.L. , c. (C.) (pending before the Legislature as this bill).

The commission shall adopt the regulations necessary to effectuate this section pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

15. (New section) Within 120 days of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the director, in consultation with the Commission of Shared Ownership Communities, established pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), shall:

a. cause to be prepared and distributed in written form and on available on the Internet, a booklet, which shall be made available to the general public, to associations, and to homeowners in shared ownership communities, and which shall serve as a general guide to community associations. The booklet shall be distributed free of charge by the association to each homeowner and by each developer to prospective purchasers prior to the signing of a sales contract; it shall be the duty of each seller of a unit to provide a copy of the booklet to a purchaser of the unit before the time of signing of the sales contract. The booklet shall include at least the following:

(1) An explanation of the nature of home ownership in a shared ownership community and a glossary of relevant terms, including, but not limited to, "master declaration," "bylaws," "master deed," "covenants and restrictions," "common elements," "liens," "fines," "rules," "alternative dispute resolution," "fees," and "governing board";

(2) A description of the rights and responsibilities of homeowners, including those contained in section 12 of P.L. ,c. (C.) (pending before the Legislature as this bill);

(3) A description of the duties and powers of, and restrictions on, governing boards, including reference to any applicable statutes, regulations, and relevant court decisions. The booklet shall include information concerning conflict of interest requirements applicable to governing board members, officers, and to professionals hired by associations and shall also include reference to any other sources of information that may be recommended by the commission as being of assistance to governing board members and officers in the discharge of their duties;

(4) A description of the statutory and regulatory requirements for association bylaws or rules and such other material as the commission shall deem useful;

(5) A description of the special rules applicable to units which are subject to affordability controls, including municipal ordinances

or other items which may affect the payment of common expenses, and reference materials concerning resale controls which may apply to such units;

(6) A description and reference to the federal law concerning the housing for older persons exception from discrimination under the federal Fair Housing Act Amendments of 1988, which applies to age-restricted communities; and

(7) A listing of documents and other information that a potential purchaser of a unit in a shared ownership community should obtain before entering into a contract to purchase a unit, including, but not limited to: copies of the association's governing documents; a copy of the latest capital reserve study, if any, showing the condition, life expectancy, and replacement costs of major mechanical systems and other common elements; any litigation pending against the association; any pending notices or orders issued by any governmental entity; the association's procedures for alternate dispute resolution and an explanation of statutory and regulatory requirements, process of adopting rules, conducting elections, providing access to records, approval of budgets, and review of homeowners' applications to do work on their units; delinquency and foreclosure rates; the association's insurance coverages; and governmental and non-governmental remedies available in the event of violation of the rights of unit owners. These documents and this information shall be made available to prospective purchasers upon written request and copies shall be provided, for a charge not exceeding the reasonable cost of copying or printing, to any person who has contracted to purchase a unit or home within the shared ownership community; and

b. make publicly available by means of electronic Internet technology all of the material required pursuant to this section.

The director shall promulgate such regulations as are necessary to effectuate this section pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

16. (New section) a. In a shared ownership community, each purchaser of a dwelling unit, or leasehold interest derived through the purchase of shares, in the case of a cooperative housing corporation, shall be deemed to have a proportional ownership interest in the common elements of the shared ownership community, which interests shall arise concomitantly with the purchase of a unit, house, or leasehold unit in the shared ownership community. The ownership interests in the shared property of a shared ownership community for each purchaser of a dwelling unit, house, or cooperative leasehold unit shall be expressed in the association documents as follows:

(1) for a condominium, a proportional undivided interest assigned to each unit, as required pursuant to P.L.1969, c.257 (C.46:8B-1 et seq.);

(2) for a cooperative, a proportional interest in the cooperative corporation, expressed in shares; or

(3) for a planned development, a proportional interest assigned in the same proportion as the common expense liability for each member; however, title to the common property may be in the name of the association collectively on behalf of all members, or it may be reflected as an interest allocated to each individually-owned property, in the manner as permitted for a condominium pursuant to P.L.1969, c. 257 (C.46:8B-1 et seq.).

b. A developer of a shared ownership community shall be deemed to be the owner of any unsold units, and any common elements interests assigned to such unsold units. During the period of developer control of an association as defined pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), a developer shall be deemed the owner of the interests in the common elements which have not otherwise been assigned to individual owners.

c. The provisions of this section shall be deemed to control all declarations, master deeds, and bylaws, regardless of the date of the formation of the shared ownership community.

17. (New section) Ownership rights in the common property of a shared ownership community shall be construed broadly to:

a. prohibit long-term developer control of an association beyond the time period authorized under section 5 of P.L.1993, c.30 (C.45:22A-47);

b. prohibit the delegation of powers from a constituent association to a master association in the community whenever the delegation of powers affects property, or the responsibility for property, which is not the common property of all members of the master association or affects services not shared in common by all members of the community; and

c. require a vote of approval by at least 67 percent of the members of the association prior to the sale of any common elements or to the construction of any new common elements which were not listed in the association documents to be constructed by the developer or the association, and which are not considered repairs or enhancements to current common elements under the criteria set forth in section 21 of P.L. , c. (C.) (pending before the Legislature as this bill). No action shall lie or be brought by an association to compel the members of the association to vote to approve any of the items in this subsection.

18. (New section) The governing board and its agents, servants, and employees, shall act in accordance with the properly recorded

bylaws of the association. For the purposes of this section, properly recorded means recorded in the official government recording office for such documents in the county in which the real property is located.

a. In addition to the provisions of P.L.1969, c.257 (C.46:8B-1 et seq.) and P.L.1993, c.30 (C.45:22A-43 et seq.) which provide requirements for bylaws, the bylaws of an association shall include, and, if they do not, shall be deemed to include, the following provisions:

(1) The form of administration of the association shall be described, providing for a governing board, specifying the powers, duties, manner of selection and removal, and compensation, if any, of the officers, directors, or trustees of the governing board. Unless otherwise provided in the bylaws, the governing board shall consist of five members. The governing board shall elect from among its members a president, vice president, secretary, and treasurer, who shall perform the duties of those offices customarily performed by officers of nonprofit corporations. On or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), these officers shall serve without compensation, unless compensation is authorized by a vote of 67 percent of all members eligible to vote, which shall be effective for a period of no longer than three years. The governing board may appoint and designate other officers and assign them such duties as it deems appropriate.

(2) (a) The method for providing notice to members and the holding of meetings of the association; provided that a meeting of the members shall be held at least annually, and a requirement that minutes be kept at every meeting;

(b) inclusion in at least one meeting notice annually a disclosure of the fact that owners may file requests for dispute resolution with the Commission on Shared Ownership Communities and a statement made to that effect at that meeting; and

(c) a requirement that the minutes of all meetings of the members and of all meetings of the governing board be kept and made available to the members within a reasonable time after the meeting. Minutes shall be kept in a businesslike manner, shall reflect accurately what was discussed at the meeting, but need not be verbatim, and shall be available for inspection by members, or their authorized representatives, and board members at reasonable times. The association shall retain these minutes for a period of not less than seven years. Minutes of closed sessions shall be made available in a redacted form if required pursuant to regulations of the Commission on Shared Ownership Communities.

(3) The share or percentage of, and the manner of sharing, common expenses for each member shall be stated. The manner of sharing the common expenses for each member of a planned development constructed on or after the effective date of

P.L. , c. (C.) (pending before the Legislature as this bill), containing only single family homes on separate lots shall be on a per unit basis. Members of associations of shared ownership communities constructed prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be permitted to petition their association governing board to call for a meeting to vote to change the method of sharing the common expenses, upon obtaining the signatures of at least five percent of all of the members of the association. The share or percentage of obligation for the common expenses shall not be computed on a different basis than the allocation of interests in the common property among the individual unit or home owners in any community.

(4) The manner of collecting from the members their shares of the expenses for the maintenance of the shared ownership community property shall be stated. Assessments shall be made against members not less frequently than quarterly, in amounts not less than are required to provide funds in advance for payments of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. The Commission on Shared Ownership Communities may vary from the provisions of this paragraph by regulation.

(5) The method by which the bylaws may be amended consistent with the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by no less than two-thirds of the members. No bylaw shall be revised or amended by reference to its title only.

(6) The officers and directors or trustees of the association shall have a fiduciary relationship to the members.

(7) (a) Any member of the governing board may be recalled and removed from office, with or without cause, by the vote of, or agreement in writing by, a majority of all members of the association, provided that any vote to recall shall be initiated only upon a petition of at least five percent of all owners. A special meeting of the association membership to vote for the recall of a member or members of the governing board shall thereafter be held, giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting.

(b) Any member of an association shall be permitted to request a hearing before the commission whenever a petition for a recall vote has been presented to a governing board in accordance with this subparagraph, and the board has failed to call for a special meeting of the association within 20 days of the receipt of the petition. Under such circumstances, the governing board shall be barred from expending resources to delay the holding of a special meeting, but

shall be permitted to expend such funds as are necessary to confirm the validity of the petition. The commission may consider whether it is necessary to escrow funds of any association pending such a special meeting. Notwithstanding this subparagraph, if there are less than 45 calendar days until the next scheduled election, the holding of a special meeting shall not be required.

(8) A procedure for notifying the governing board if a member intends to make an audio or video recording of a meeting; provided that permission to make an audio recording for a member's own use shall not be denied to a member, regardless of whether the governing board arranges to record the same meeting. The board shall announce prior to the start of a meeting whether an audio or video recording is being made.

(9) A requirement for maintaining adequate insurance to protect the association and the property comprising the common elements of the shared ownership community. Insurance shall cover replacement costs, and deficits in insurance coverage on common elements shall not be chargeable to any individual unit owner. A copy of each policy of insurance in effect shall be made available for inspection by members at reasonable times.

(10) A method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the shared ownership community property; and

(11) Restrictions on, and requirements respecting the time, place, and manner of the use of the common community property, so long as such restrictions and requirements are not inconsistent with the association documents, P.L. , c. (C.) (pending before the Legislature as this bill), the regulations of the Commission on Shared Ownership Communities, and any other local, federal, or State law.

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

c. The Commission on Shared Ownership Communities may promulgate more specific guidelines for bylaw provisions, in accordance with the provisions and purposes of P.L. , c. (C.) (pending before the Legislature as this bill), in order to foster transparent and democratic governance in shared ownership

communities. Such guidelines may include bidding procedures, restrictions on conflicts of interests, meeting and minutes requirements, or any matters which the commission deems necessary to minimize disputes and promote transparent and democratic governance within shared ownership communities.

19. (New section) a. Any management, employment, service or maintenance contract, or contract for the supply of equipment or material which is directly or indirectly made by or on behalf of an association, during the period of developer control pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), shall not be entered into for a period in excess of two years. Any such contract or lease may not be renewed or extended for periods in excess of two years and at the end of any two-year period, an association may terminate any further renewals or extensions thereof.

b. Notwithstanding the above, any management contract or agreement entered into after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall terminate 90 days after the first meeting of a governing board whose decisions are not subject to the voting control of the developer pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), unless the owner-controlled governing board ratifies the contract or agreement.

20. (New section) a. An association shall maintain all records concerning the business and governance matters of the association, in accordance with generally accepted accounting standards and principles.

The records required to be maintained shall include, but not be limited to:

(1) records of receipts and expenditures, cancelled checks, general ledgers, and copies of contracts or any other legal documents, including, but not limited to, opinions of the association attorney construing the governing documents, correspondence with any federal, State, or local governmental entity; and

(2) An account for each member, designating the name and current mailing address of the member, the amount of each assessment, the dates on which and amounts in which the assessments come due, the amount paid on the account, and the balance due.

b. Records shall be open to inspection by association members or their authorized representatives at reasonable times, and written summaries of such records shall be supplied at least annually to the members or their authorized representatives. All records required to be available for inspection by association members shall be maintained by an association for a period of not less than seven years. The records may be permitted to be maintained in a

graphically-based form on an easily accessible electronic media, from which copies may be reproduced.

(1) An association shall not charge a fee to an owner for viewing or copying association records which exceeds the cost permitted to be charged to a requester under section 6 of P.L.2001, c.404 (C.47:1A-5).

(2) A requesting owner who is denied access to an association record by the custodian of the record, at the option of the owner, may:

(a) institute a proceeding to challenge the custodian's decision by filing an action in Superior Court which shall be heard in the vicinage where it is filed by a Superior Court Judge who has been designated to hear such cases because of that judge's knowledge and expertise in matters relating to access to records; or

(b) in lieu of filing an action in Superior Court, file a request for assistance in obtaining records with the Commission on Shared Ownership Communities established pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

In the event a proceeding is instituted under subparagraph (a) of this paragraph, the failure of the association to permit inspection of its accounting records by members or their authorized representatives shall entitle any persons prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the books and records, if that person, who directly or indirectly, knowingly denied access to the books and records for inspection.

21. (New section) Notwithstanding any association document, or any law to the contrary, on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill):

a. Construction of any new common element not listed or contemplated on the master deed or declaration shall require an amendment to the declaration. For the purposes of this subsection “construction” shall include construction, reconstruction, or substantial alteration of a common element whenever the construction, reconstruction, or alteration does not involve repair or replacement using substantially the same materials as the original construction to that existing common or limited common element, but shall not mean any construction undertaken pursuant to a governmental or court order. This subsection shall not apply to construction, or financing in conjunction with that construction, undertaken by a developer in accordance with the association documents.

b. Except as expressly permitted in this section, an association shall not collect from its members as part of the customary association assessment, or pay from association funds, dues or contributions to any private trade or industry organization

concerning community associations, or make contributions for charitable or political purposes. An association may collect dues, or charitable or political contributions if authorized under the bylaws, but such collections shall be stated separately from the billing for customary monthly maintenance charges, shall be clearly designated as voluntary, and if unpaid, may in no case be assessable or collectible as an unpaid common expense against an owner. A contribution to any private trade or industry organization through a property management company or property manager on behalf of an association is prohibited. An association violating this subsection shall be subject to sanctions by the Commission on Shared Ownership Communities, as set forth in P.L. , c. (C.) (pending before the Legislature as this bill). Any member of a governing board who knowingly violates this subsection shall be removed from the governing board by the Commission on Shared Ownership Communities, and a new election ordered for that position.

c. Regardless of any governing documents to the contrary, an owner of more than one unit shall not have attributed to him or her more than 50 percent of all of the votes in the association. This subsection shall not apply to shared ownership communities containing less than four dwelling units; provided that this number may be modified by the Commission on Shared Ownership Communities pursuant to regulations.

22. (New section) a. Unless the members of an association have determined, by a majority vote at a duly called meeting of the members, to provide no reserves or fewer reserves than required by this subsection, in addition to annual operating expenses, the budget of an association shall include individual reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which the deferred maintenance expense or replacement cost exceeds $10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.

b. Reserve funds and any interest accruing thereon shall remain in the individual reserve account or accounts, and shall be used only for authorized individual reserve expenditures unless their use for other purposes is approved in advance by a majority vote of all of the members.

c. In a multi-association community, only the voting interests of the units subject to assessment to fund the reserves in question shall be eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended.

d. The budget, account balances, and reserve accounts shall be disclosed to owners in an annual financial statement, and to prospective purchasers upon the signing of a contract for sale. Associations shall have audits performed by a certified public accountant at least once every three years. The audit reports shall be filed with the Commission on Shared Ownership Communities, established pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill). The commission may waive the requirement for an audit for associations with diminutive annual expenditures, and in addition may adopt regulations concerning the frequency and type of audits required.

23. (New section) a. Unit owners may be subject to reasonable fines or other sanctions, other than liens therefor, imposed by the governing board for failure to comply with the bylaws or rules adopted by the association, which fines or sanctions may be imposed only subsequent to alternative dispute resolution proceedings provided in accordance with the association's properly adopted dispute resolution procedures and compliance with the informational disclosure requirements of P.L. , c. (C.) (pending before the Legislature as this bill).

b. An owner individually, a group of owners, or the association may maintain an action for the recovery of damages, or for injunctive relief, or a combination thereof, for the failure to comply with the rules or bylaws, or the failure to uphold the rules or bylaws in the case of an association, provided a request has not been filed with the Commission on Shared Ownership Communities for alternative dispute resolution services pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) by any party named in the action, and the resolution of that request is still pending. The prevailing party on the majority of issues litigated in an action for recovery of damages or injunctive relief, whether a unit owner or owners, or the association, shall be entitled to reasonable expenses, including attorneys fees, that may be incurred by it in connection with such action.

24. (New section) No lien shall be recorded by an association for a fine imposed after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) without judicial or administrative review as provided under P.L. , c. (C.) (pending before the Legislature as this bill). No association shall impose a fine after the effective date of P.L. , c. (C.)

(pending before the Legislature as this bill), unless such association shall have offered alternative dispute resolution to the member in accordance with P.L. , c. (C.) (pending before the Legislature as this bill) and shall have provided the information to the Commission on Shared Ownership Communities as required by P.L. , c. (C.) (pending before the Legislature as this bill).

25. (New section) a. There is created in the Division of Consumer Affairs of the Department of Law and Public Safety, a Bureau of Homebuyers Protection. On and after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), this bureau shall be the State entity responsible for enforcing the consumer protections afforded purchasers in shared ownership communities pursuant to "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.).

b. The bureau shall promulgate such rules and regulations as may be necessary to effectuate “The Planned Real Estate Development Full Disclosure Act, P.L.1977, c.419 (C.45:22A-21 et seq.) and any additional regulations which may be necessary to effectuate the provisions of P.L. , c. (C.) (pending before the Legislature as this bill), in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The bureau may adopt in its entirety or incorporate by reference selected regulations previously promulgated to effectuate “The Planned Real Estate Development Full Disclosure Act, P.L.1977, c.419 (C.45:22A-21 et seq.). The bureau shall develop the forms and procedures for the streamlined submission and expedited review process required under P.L. , c. (C.) (pending before the Legislature as this bill), and adopt regulations therefor, within 120 days of the enactment of P.L. , c. (C.) (pending before the Legislature as this bill).

c. (1) The bureau shall be headed by an attorney-at-law of the State of New Jersey.

(2) The bureau shall administer the law in a manner that at all times provides protection to prospective purchasers through clear and understandable disclosures, of the rights of purchasers and owners of homes within shared ownership communities in all phases of the home-buying process.

26. (New section) a. Notwithstanding any municipal ordinance to the contrary, a municipality shall not require a developer of a planned real estate development as that term is defined in section 3 of P.L.1977, c.419 (C.45:22A-23), by ordinance or otherwise, to form a homeowners’ association, if the common elements in the community will consist solely of unimproved, unencumbered open space, unless such an association is required to be formed pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43).

b. A municipality shall not require a developer of a planned real estate development to construct certain of the common elements prior to the construction of other elements of the community, common or otherwise; provided, however, that a municipality may prioritize the construction of roads or require such other contributions as allowed pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

27. Section 3 of P.L.1989, c.9 (C.2A:62A-14) is amended to read as follows:

3. a. No bylaws shall be amended in accordance with section 2 of 【this act】 P.L.1989, c.9 unless the amendment is approved by the owners of at least two-thirds of the units held by unit owners other than the developer in the qualified common interest community.

b. 【Bylaws】 Certain bylaw provisions which limit the liability of an association in any civil action brought by or on behalf of a unit owner to respond in damages as a result of bodily injury to the unit owner occurring on the premises of the qualified common interest community which were adopted in accordance with section 2 of 【this act】 P.L.1989, c.9 shall apply to actions for injuries sustained on or after the operative date of the bylaws and shall expire on the 91st day next following enactment of P.L. , c. (C.) (pending before the Legislature as this bill); provided, however, that such bylaws may readopted and approved by two-thirds of the current members of the association other than the developer. Any such bylaws readopted shall expire annually unless readopted and approved annually by at least two-thirds of members of the association eligible to vote.

(cf: P.L.1989, c.9, s.3)

28. Section 1 of P.L.1989, c.299 (C.40:67-23.2) is amended to read as follows:

1. For the purposes of this act:

a. "Condominium" means the form of real property ownership provided for under the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.);

b. "Cooperative" means a housing corporation or association wherein the holder of a share or membership interest in the corporation or association is entitled to possess and occupy, for dwelling purposes, a house, apartment, or other unit of housing owned by the corporation or association, or to purchase a unit of housing constructed or erected by the corporation or association;

c. "Fee simple community" means a private community which consists of individually owned lots or units and provides for common or shared elements or interests in real property;

d. "Horizontal property regime" means the form of real property ownership provided for under the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.);

e. "Qualified private community" means a residential condominium, cooperative, fee simple community, [or] horizontal property regime, <u>or a shared ownership community, provided that no community shall be deemed a qualified private community if its association has not registered with the Commission on Shared Ownership Communities as required pursuant to P.L. , c. (C.) (pending before the Legislature as this bill),</u> the residents of which do not receive any tax abatement or tax exemption related to its construction, comprised of a community trust or other trust device, condominium association, homeowners' association, or council of co owners, wherein the cost of maintaining roads and streets and providing essential services is paid for by a not-for-profit entity consisting exclusively of unit owners within the community. No apartment building or garden apartment complex owned by an individual or entity that receives monthly rental payments from tenants who occupy the premises shall be considered a qualified private community. No "proprietary campground facility," as defined in section 1 of P.L.1993, c.258 (C.45:22A-49), shall be considered to be a qualified private community.

(cf: P.L.1993, c.258, s.10)

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

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

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

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

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

d. "Purchaser" or "owner" means any person or persons who acquires a legal or equitable interest in a unit, lot, or parcel in a planned real estate development, and shall be deemed to include a prospective purchaser or owner.

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

f. "Commissioner" means the Commissioner of Community Affairs<u>, except that after the effective date of P.L. , c. (C.) all references to the commissioner shall mean the Chief of the Bureau of Homebuyers Protection established pursuant to that act</u>.

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

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

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

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

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

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

(1) Newspaper or periodical;

(2) Radio or television broadcast;

(3) Written or printed or photographic matter;

(4) Billboards or signs;

(5) Display of model houses or units;

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

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

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

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

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

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

n. "Association" means an association for the management of common elements and facilities【, organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43)】 in a community containing such common elements and facilities.

o. "Executive board" or governing board means the 【executive】 board elected by the members of an association, 【as provided for】 in accordance with 【section】 sections 3 and 5 of P.L.1993, c.30 (C.45:22A- 45) and (C.45:22A-47) and P.L. , c. (C.) (pending before the Legislature as this bill).

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

q. “Chief” means the Chief of the Bureau of Homebuyers Protection in the Department of Law and Public Safety, established pursuant to section 25 of P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2006, c.63, s.39)

30. Section 4 of P.L.1977, c.419 (C.45:22A-24) is amended to read as follows:

4. 【This act】 On and after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), P.L.1977, c.419 shall be administered by the 【Division of Housing and Development in the State Department of Community Affairs】 Bureau of Homebuyers Protection in the Division of Consumer Affairs in the Department of Law and Public Safety, established pursuant to section 25 of P.L. , c. (C.) (pending before the Legislature as this bill), hereinafter referred to as the "agency."

(cf: P.L.1993, c.258, s.9)

31. Section 5 of P.L.1977, c.419 (C.45:22A-25) is amended to read as follows:

5. a. Unless the method of disposition is adopted for purposes of evasion, the provision of this act shall not apply to offers or dispositions:

(1) By an owner for his own account in a single or isolated transaction;

(2) Wholly for industrial, commercial, or other nonresidential purposes;

(3) Pursuant to court order;

(4) By the United States, by this State or any of its agencies or political subdivisions;

(5) Of real property located without the State;

(6) Of cemetery lots or interests;

(7) ⟦Of less than 100 lots, parcels, units or interests; provided, however, that with respect to condominiums and cooperatives, this exemption shall not apply, irrespective of the number of lots, parcels, units, or interests offered or disposed of;⟧ (Deleted by amendment, P.L. , c. ;) pending before the Legislature as this bill)

(8) ⟦Of developments where the common elements or interests, which would otherwise subject the offering to this act, are limited to the provision of unimproved, unencumbered open space;⟧ (Deleted by amendment, P.L. , c. . (pending before the Legislature as this bill)

(9) In a development composed wholly of rental units, where the relationship created is one of landlord and tenant;

(10) Of any form of timesharing.

b. The agency may from time to time, pursuant to its rules and regulations, exempt from ⟦any of the provisions⟧ the registration fees, in part, or from certain detailed disclosure requirements of ⟦this act⟧ P.L.1977, c.419, any development, or any lots, units, parcels, or interests in a development, if it finds that the enforcement of ⟦this act⟧ P.L.1977, c.419 to such ⟦, is not necessary in the public interest or required for the protection of purchasers by reason of the small amount of the purchase price involved,⟧ will not be impacted by such reduced fees or streamlined reporting requirements. No registration fees shall be charged in connection with units reserved for occupancy by low or moderate income households. Reduced registration fees may be permitted when the limited character of the offering, or the limited nature of the common or shared elements weighs in favor of such fee reduction.

(cf: P.L.2006, c.63, s.40)

32. Section 6 of P.L.1977, c.419 (C.45:22A-26) is amended to read as follows:

6. a. Unless otherwise exempted:

(1) No developer may offer or dispose of any interest in a planned real estate development, prior to the registration of such development with the agency.

(2) No developer may dispose of any lot, parcel, unit, or interest in a planned real estate development, unless he: delivers to the purchaser a current public offering statement, on or before the date the contract [date of such disposition] is signed.

b. Any contract or agreement for the purchase of any parcel, lot, unit, or interest in a planned real estate development may be canceled without cause by the purchaser by sending or delivering written notice of cancellation by midnight of the seventh calendar day following the day on which the purchaser has executed such contract or agreement. Every such contract or agreement shall contain, in writing, the following notice in 10-point bold type or larger, directly above the space provided for the signature of the purchaser:

"NOTICE TO THE PURCHASER: you have the right to cancel this contract by sending or delivering written notice of cancellation to the developer by midnight of the seventh calendar day following the day on which it was executed. Such cancellation is without penalty, and any deposit made by you shall be promptly refunded in its entirety."

c. Notice as required in subsection b. shall, in addition to all other requirements, be conspicuously located and simply stated in the public offering statement.

d. The developer shall make copies of the public offering statement freely available to prospective purchasers prior to the contract date of disposition.

(cf: P.L.1977, c.419, s 6)

33. Section 7 of P.L.1977, c.419 (C.45:22A-27) is amended to read as follows:

7. a. The application for registration of the development shall be filed as prescribed by the agency's rules and shall contain the following documents and information:

(1) An irrevocable appointment of the agency to receive service of any lawful process in any noncriminal proceeding arising under this act against the developer or his agents;

(2) The states or other jurisdictions, including the federal government, in which an application for registration or similar documents have been filed, and any adverse order, judgment or decree entered in connection with the development by the regulatory authorities in each jurisdiction or by any court;

(3) The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status, or performing similar management functions; the extent and

nature of his interest in the applicant or the development as of a specified date within 30 days of the filing of the application;

(4) Copies of its articles of incorporation, with all amendments thereto, if the developer is a corporation; copies of all instruments by which the trust is created or declared, if the developer is a trust; copies of its articles of partnership or association and all other papers pertaining to its organization, if the developer is a partnership, unincorporated association, joint stock company, or any other form of organization; and if the purported holder of legal title is a person other than the developer, copies of the above documents from such person;

(5) A legal description of the lands offered for registration, together with a map showing the subdivision proposed or made, and the dimensions of the lots, parcels, units, or interests, as available, and the relation of such lands to existing streets, roads, and other improvements;

(6) Copies of the deed or other instrument establishing title to the subdivision in the developer, and a statement in a form acceptable to the agency of the condition of the title to the land comprising the development, including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, or by other evidence of title acceptable to the agency;

(7) Copies of the instrument which will be delivered to a purchaser to evidence his interest in the development, and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(8) Copies of any management agreements, service contracts, or other contracts or agreements affecting the use, maintenance or access of all or a part of the development;

(9) A statement of the zoning and other government regulations affecting the use of the development including the site plans and building permits and their status, and also of any existing tax and existing or proposed special taxes or assessments which affect the development; and a statement of the existing use of adjoining lands;

(10)A statement that the lots, parcels, units or interests in the development will be offered to the public, and that responses to applications will be made without regard to marital status, sex, race, creed, or national origin;

(11)A statement of the present condition of access to the development, the existence of any unusual conditions relating to noise or safety, which affect the development and are known to the developer, the availability of sewage disposal facilities and other public utilities including water, electricity, gas, and telephone facilities in the development to nearby municipalities, and the nature of any improvements to be installed by the developer and his estimated schedule for completion;

(12) In the case of any conversion an engineering survey shall be required, which shall include mechanical, structural, electrical and engineering reports to disclose the condition of the building;

(13) In the case of any development or portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under the instrument or instruments creating such encumbrances and the steps, if any, taken to protect the purchaser in such eventuality;

(14) A narrative description of the promotional plan for the disposition of the lots, parcels, units or interests in the development, together with copies of all advertising material which has been prepared for public distribution, and an indication of their means of communication;

(15) The proposed public offering statement;

(16) A current financial statement, which shall include such information concerning the developer as the agency deems to be pertinent, including but not limited to, a profit and loss statement certified by an independent public accountant and information concerning any adjudication of bankruptcy during the last five years against the developer, or any principal owning more than 10% of the interest in the development at the time of filing, provided, however, that this shall not extend to limited partners, or others whose interests are solely those of investors;

(17) Copies of instruments creating easements or other restrictions;

(18) A statement of the status of compliance with the requirements of all laws, ordinances, regulations, and other requirements of governmental agencies having jurisdiction over the premises;

(19) Such other information, documentation, or certification as the agency deems necessary in furtherance of the protective purposes of this act.

b. The information contained in any application for registration and copies thereof, shall be made available to interested parties at a reasonable charge and under such regulations as the agency may prescribe.

c. A developer may register additional property pursuant to the same common promotional plan as those previously registered by submitting another application, providing such additional information as may be necessary to register the additional lots, parcels, units or interests, which shall be known as a consolidated filing.

d. The developer shall immediately report any material changes in the information contained in an application for registration. The term "material changes" shall be further defined by the agency in its regulations.

e. The application shall be accompanied by a fee in an amount equal to ⟦$500.00 plus $35.00 per lot, parcel, unit, or interest contained in the application, which fees may be used by the agency to partially defray the cost of rendering services under the act. If the fees are insufficient to defray the cost of rendering services under P.L.1977, c.419 (C.45:22A-21 et seq.), the agency shall, by regulation, establish a revised fee schedule. The revised fee schedule shall assure that the fees collected reasonably cover but do not exceed the expenses and administration of implementing P.L.1977, c.419 (C.45:22A-21 et seq.)⟧ : the value of each dwelling unit proposed to be built as that value will be stated for the purposes of the New Home Warranty Program, or the proposed sales price of that dwelling unit if the warranty value is undeterminable, multiplied by three hundredths of one percent (.0003). All fees collected by the agency shall be forwarded to the State Treasurer and thereafter maintained in a separate, non-lapsing account, to be used solely for the purposes of defraying the State costs of rendering services and protections to homebuyers and homeowners in shared ownership communities, as required to be provided under P.L. , c. (C.) (pending before the Legislature as this bill), and "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c. 419 (C.45:22A-21 et seq.), including the supplement to that act, P.L.1993, c.30 (C.45:22A-43 et seq.). The Bureau of Homebuyers Protection in the Division of Consumer Affairs of the Department of Law and Public Safety and the Commission on Shared Ownership Communities shall be authorized to be reimbursed from the account required to be established pursuant to this section by the State Treasurer.

If the agency determines, upon a review that shall be undertaken upon the cessation of developer control of the association pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), that the estimated average sales price per housing unit used to calculate the fees varied by more than one percent from the actual average sales price of all housing units, the agency shall collect from or remit to the developer the difference between the two calculations.

f. (1) An engineering study required pursuant to paragraph (12) of subsection a. of this section shall be conducted, and the results thereof certified, by a person licensed in this State as a professional engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.).

(2) The engineer who prepares the survey shall certify to the agency whether, in his judgment, the building is in compliance with the code standards adopted under the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.) and the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.) and shall list all outstanding violations then existing in accordance with his observation and judgment. The engineer shall be immune from tort liability with regard to such certification and list in the same

manner and to the same extent as if he were a public employee protected by the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

(3) If the agency finds there is a significant discrepancy between the engineering survey submitted by the applicant and an engineering survey submitted by any tenant or tenants currently residing in the building, the agency shall investigate the matter in order to determine the true state of facts prior to approving the application. The agency may use its own staff or contract with independent professionals, and may conduct hearings in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Any cost to the agency of hiring independent professionals shall be borne by the applicant developer at the discretion of the agency.

(cf: P.L.1991, c.509, s.21)

34. Section 8 of P.L.1977, c.419 (C.45:22A-28) is amended to read as follows:

8. a. A public offering statement shall disclose fully and accurately the characteristics of the development<u>, the nature and extent of shared property ownership interests and obligations for those interests,</u> and the lots, parcels, units, or interests therein offered, and shall make known to prospective purchasers all unusual or material circumstances or features affecting the development. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and regulations and shall include the following:

(1) The name and principal address of the developer;

(2) A general narrative description of the development stating the total number of lots, units, parcels, or interests in the offering, and the total number of such interests planned to be sold, leased or otherwise transferred;

(3) Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance, or access of all or any part of the development, with a brief and simple narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the developer and the managing agent or firm;

(4) (a) The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations, affecting such lands and each unit, lot, parcel, or interest, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect such lands; and

(b) In the case of a conversion subject to the provisions of the "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), the information required pursuant to section 14 of P.L.1991, c.509 (C.2A:18-61.53);

(5) (a) Relevant community information, including hospitals, health and recreational facilities of any kind, streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities; and

(b) The estimated cost, size, date of completion, and responsibility for construction and maintenance of existing and proposed amenities which are referred to in connection with the offering or disposition of any interest in the subdivision or subdivided lands;

(6) A copy of the proposed budget for the operation and maintenance of the common or shared elements or interests;

(7) Additional information required by the agency to assure full and fair disclosure to prospective purchasers.

b. The public offering statement shall not be used for any promotional purposes before registration of the development and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the development or dispositions therein. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement, unless the agency requires or permits it.

c. The agency may require the developer to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of a planned real estate development may be made after registration without the approval of the agency. A public offering statement shall not be current unless all amendments have been incorporated.

d. The public offering statement shall, to the extent possible, combine simplicity and accuracy of information, in order to facilitate purchaser understanding of the totality of rights, privileges, obligations and restrictions, comprehended under the proposed plan of development. In reviewing such public offering statement, the agency shall pay close attention to the requirements of this subsection, and shall use its discretion to require revision of a public offering statement which is unnecessarily complex, confusing, or is illegible by reason of type size or otherwise.

<u>e. On or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the agency shall review its processes for submission of the public offering statement, and shall develop a streamlined process for form submission and expedited review, in accordance with the purposes of P.L. , c. (C.) (pending before the Legislature as this bill). The process shall rely on electronic media submission to the extent practicable, which submission shall have text-searchable properties, and be in a format deemed acceptable by the agency. Salient</u>

information shall be indexed, and an executive summary of the salient information contained in the public offering statement, in plain language, shall be placed at the front of the document, including a summary of the rights, liabilities, obligations, and governing form applicable to the association.
(cf:P.L.1991, c.509, s.22)

35. Section 10 of P.L.1977, c.419 (C.45:22A-30) is amended to read as follows:

10. a. Upon receipt of the application for registration in proper form, and accompanied by proper fee, the agency shall, within 10 business days, issue a notice of filing to the applicant. Within 【90】 45 days from the date of the notice of filing, the agency shall enter an order registering the development or rejecting the registration, provided that the expedited method of submission has been initiated by the agency and complied with in all aspects by the developer; otherwise the agency shall enter an order registering the development or rejecting the registration within 90 days. If no order of rejection is entered within 45 or 90 days, respectively, from the date of notice of filing, the development shall be deemed registered unless the applicant has consented in writing to a delay.

b. If the agency affirmatively determines that the requirements of section 9 of 【this act】 P.L.1977, c.419 (C.45:22A-29) have been met, it shall enter an order registering the development.

c. If the agency determines upon inquiry and examination that any of the requirements of section 9 of 【this act】 P.L.1977, c.419 (C.45:aaA-29) have not been met, the agency shall notify the applicant that the application for registration must be corrected in such particulars, within 30 days, as designated by the agency. If the requirements are not met within the time allowed, the agency may enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective until 20 days after the lapse of the aforesaid specified period during which 20-day period the applicant may petition for reconsideration and shall be entitled to a hearing. Such order of rejection shall not take effect, in any event, until such time as the hearing, once requested, has been given to the applicant.
(cf: P.L.1977, c.419, s.10)

36. Section 1 of P.L.1993, c.30 (C.45:22A-43) is amended to read as follows:

1. 【A】 Unless exempted as provided in this section, a developer of a planned development, whether or not subject to the registration requirements of section 6 of P.L.1977, c.419 (C.45:22A-26), shall organize or cause to be organized an association whose obligation it shall be to manage the common

elements and facilities. The developer may be exempted from forming an association upon a determination by the agency that there will be no expenses in connection with maintenance of any of the proposed common property in the community, and all such common property consists solely of unimproved and unencumbered open space. The association shall be formed on or before the filing of the master deed or declaration of covenants and restrictions, and may be formed as a for-profit corporation only if the development will be a cooperative housing corporation issuing shares, or a nonprofit corporation 【, unincorporated association, or any other form permitted by law】 if a condominium or planned development.
(cf: P.L.1993, c.30, s.1)

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

2. a. Subject to the master deed, declaration of covenants and restrictions or other instruments of creation, 【the】 an association as that term is defined under section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), may do all that it is legally entitled to do under the laws applicable to its form of organization. In addition, an association of a shared ownership community shall have the identical powers and obligations to those as set forth in section 15 of P.L.1969, c.257 (C.46:8B-15) for condominium associations.

b. 【The】 An association shall exercise its powers and discharge its functions in a manner that protects and furthers the health, safety and general welfare of the residents of the community. The actions of an association concerning governance of its members shall embody standards of due process, open governance, democracy, and fundamental fairness, similar to those to which governmental bodies are held, in all areas of governance, including, but not limited to elections, access to records, open meetings, and alternate dispute resolution, and shall be judged under these standards.

Actions of associations in matters not concerning governance over its members shall be subject to the business judgment rule, but implemented in a manner that protects and furthers the health, safety and general welfare of the residents of the community.

c. 【The】 An association shall provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation. Any costs of any procedure provided shall be borne as a common expense by all of the members of the association, and not assessed against any individual owner or owners.

d. The association may assert tort claims concerning the common elements and facilities of the development as if the claims

were asserted directly by the unit owners individually.
(cf: P.L.1993, c.30, s.2)

38. Section 3 of P.L.1993, c.30 (C.45:22A-45) is amended to read as follows:

3. a. ⟦The form of administration of an⟧ An association ⟦organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43)⟧ as defined pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) shall provide for the election of ⟦an executive⟧ a governing board, elected by and responsible to the members of the association pursuant to section 4 of P.L.1993, c.30 (C.45:22A-46), through which the powers of the association shall be exercised and its functions performed. All members of the association shall be permitted to be nominated for and run for elected positions on the governing board. Elections shall be held at least every two years, and shall be conducted with strict adherence to democratic principles and fairness. If an association has had no election which complies with the provisions of this section before the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), other than the initial election required pursuant to section 5 of P.L.1993. c.30 (C.45:22A-47), then an election shall be held, to be monitored by the Commission on Shared Ownership Communities, and in accordance with regulations to be promulgated under P.L. , c. (C.) (pending before the Legislature as this bill).

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

c. The members of ⟦the executive⟧ a governing board appointed by the developer shall be liable as fiduciaries to the owners for their acts or omissions.

d. During control of ⟦the executive⟧ a governing board by the developer, copies of the annual audit of association funds shall be available for inspection by owners or their authorized representative at the project site.
(cf: P.L.1993, c.30, s.3)

39. Section 4 of P.L.1993, c.30 (C.45:22A-46) is amended to read as follows:

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

a. A requirement that all meetings of the ⟦executive⟧ governing board⟦, except conference or working sessions at which no binding votes are to be taken,⟧ shall be open to attendance by all

unit owners, and adequate notice of any such meeting shall be given to all unit owners in such manner as the bylaws shall prescribe; except that the [executive] governing board may exclude or restrict attendance at those meetings, or portions of meetings, dealing with (1) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; (2) any pending or anticipated litigation or contract negotiations; (3) any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer, or (4) any matter involving the employment, promotion, discipline or dismissal of a specific officer or employee of the association. At each meeting required under this subsection to be open to all unit owners, the participation of unit owners in the proceedings or the provision of a public comment session shall be [at the discretion of the executive board] permitted, but may be limited in duration in accordance with regulations which may be promulgated by the Commission on Shared Ownership Communities, minutes of the proceedings shall be taken, and copies of those minutes shall be made available to all unit owners before the next open meeting, or within 60 days, whichever is sooner, or shall be in accordance with any regulations promulgated by the Commission on Shared Ownership Communities.

b. The method of calling meetings of unit owners, the percentage of unit owners or voting rights required to make decisions and to constitute a quorum. The bylaws may, nevertheless, provide that unit owners may waive notice of meetings or may act by written agreement without meetings.

c. The manner of collecting from unit owners their respective shares of common expenses and the method of distribution to the unit owners of their respective shares of common surplus or such other application of common surplus as may be duly authorized by the bylaws.

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

Notwithstanding any provision of P.L.1993, c.30 (C.45:22A-43 et seq.) to the contrary, all bylaws and association documents of an association shall comply with the minimum requirements of sections 16 and 18 of P.L. , c. (C.) (pending before the Legislature as this bill) for such documents, or shall be deemed to include such provisions by incorporation through this section.

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

40. Section 5 of P.L.1993, c.30 (C.45:22A-47) is amended to read as follows:

5. a. Upon the sale of 20 percent of the lots parcels, units, or interests to be created in the community, the developer shall arrange for the members of the association to hold an election for an owners' coordinating council, which group shall be comprised of at least three owners other than the developer. The council shall be a steering committee for owners' complaints and to provide guidance to the developer and association on issues of importance to the owners. In addition, the council shall coordinate the elections to the association governing board when owners may be elected to that board in accordance with this section, and shall serve as the owners' finance committee during the period of developer control. All elections to this group shall comply with election guidelines to be promulgated by the Commission on Shared Ownership Communities established pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), provided that only members elected by the unit owners, other than the developer or developer's appointees to the governing board, shall serve on the council, and the council's decisions shall be free of any control by the developer or any member of the governing board appointed by the developer. Any vacancies on the council shall be filled within 30 days by current council members, and in the case of any tie votes by such council members, by the vote of the unit owners other than the developer within 60 days after the vacancy occurs.

Irrespective of the time set for developer control of the association provided in the master deed, declaration of covenants and restrictions, or other instruments of creation, control of the voting interests of the governing board of the association shall be surrendered to the owners in the following manner:

(1) Sixty days after conveyance of 25 percent of the lots, parcels, units or interests, not fewer than 25 percent of the members of the [executive] governing board shall be elected by the owners, in accordance with election procedures to be promulgated by the Commission on Shared Ownership Communities.

(2) Sixty days after conveyance of 50 percent of the lots, parcels, units or interests, not fewer than 40 percent of the members of the [executive] governing board shall be elected by the owners.

(3) Sixty days after conveyance of 75 percent of the lots, parcels, units or interests, the developer's control of the [executive] governing board shall terminate, at which time the owners shall elect the entire [executive] governing board; except that the developer may retain the selection of one [executive] governing board member representing his interests as a unit owner so long as there are any units remaining unsold in the regular course of business. The retention by the developer of one member on the

governing board shall cease if no units remain which are being offered for sale to the public. Unsold units converted to rental units by a developer shall create a presumption that the developer has ceased selling, and in that event, any tenant of a developer-owned unit shall be deemed to be a member of the association as if the tenant owns the unit.

b. The percentages specified in subsection a. of this section shall be calculated upon the basis of the whole number of units entitled to membership in the association. The bylaws of the association shall specify the number or proportion of votes of all units conveyed to owners that shall be required for the election of board members. Unless the bylaws provide otherwise, each unit conveyed to an owner shall be entitled to one vote. A developer may surrender control of the executive board of the association before the time specified in subsection a. of this section, if the owners agree by a majority vote to assume control.

c. Upon assumption by the owners of control of the 【executive】 voting interests of the governing board of the association, the developer shall forthwith deliver to the association all items and documents pertinent to the association, such as, but not limited to, a copy of the master deed, declaration of covenants and restrictions, documents of creation of the association, bylaws, minute book including all minutes, any rules and regulations, association funds and an accounting therefor, all personal property, insurance policies, government permits, a membership roster and all contracts and agreements relative to the association. In addition, all similar items required to be turned over by a developer of a condominium pursuant to section 2 of P.L.1979, c.157 (C.46:8B-12.1) shall be required to be turned over by a developer of a shared ownership community to the association.

d. The association when controlled by the owners shall not take any action that would be detrimental to the sale of units by the developer, and shall continue the same level of maintenance, operation and services as immediately prior to their assumption of control, until the last unit is sold.

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

f. The developer shall not be permitted to cast any votes allocated to unsold lots, parcels, units, or interests, in order to amend the master deed, bylaws, or any other document, for the purpose of changing the permitted use of a lot, parcel, unit, or

interest, or for the purpose of reducing the common elements or facilities.

g. If the council of owners authorized in subsection a. of this section is established and there has been substantial completion of the common elements and public improvements in any phase of the shared ownership community which are not covered by the performance or maintenance guarantees posted with any governmental agencies having jurisdiction, the council shall request the association to cause such common elements and improvements to be inspected and evaluated for compliance with the developer's warranty and construction obligations, with the assistance of qualified independent engineering and legal consultants selected by the council. The fees for such consultants shall be paid from funds contributed by the developer.

(1) Public improvements to be dedicated to any governmental entity shall be exempt from any direct warranty or construction defect claims by the association or the unit owners other than the developer. Acceptance of any such public improvements by the governmental entity to which they are to be dedicated shall be deemed conclusive evidence that such improvements have been satisfactorily completed and the developer shall have no further obligation with respect to those improvements, either to the association, to any unit owners other than the developer, or to any governmental agency having jurisdiction.

(2) Within 120 days after the association's receipt of any request for inspection of any phase of the completed common elements or other improvements, the council shall require its engineering consultant to inspect the particular completed improvements and render a written evaluation of them to the council. A copy of the final report, following the council’s review of the initial evaluation, shall be furnished to the developer within 30 days after the committee's receipt of the report. Thereafter, the council and the developer shall conduct one or more joint inspections of the common elements and other improvements covered by the request and pursue good faith negotiations to resolve any warranty or construction defect claims against the developer. All fees and related expenses incurred by the council for engineering and legal consultants shall be paid promptly by the association from available designated funds.

(3) If a settlement agreement is finalized between the council and the developer, the developer-controlled executive board shall have the authority to execute an agreement and to release the declarant from all liability with respect to the completed common elements and improvements, subject to such terms and conditions as may be contained in the agreement. Any such settlement agreement and release shall be legally binding upon the association and the

unit owners, provided that its form is approved by the independent legal counsel retained by the council on behalf of the association.

(4) If no settlement agreement is approved by the council within 180 days after the request for inspection, the parties shall be obligated to proceed to mediation within 30 days thereafter in accordance with section 10 of P.L. , c. (C.) (pending before the Legislature as this bill). If no settlement is reached through mediation within 15 days after commencement of same, then the parties shall promptly proceed to non-binding arbitration of any remaining issues in accordance with rules promulgated by the director. Such mediation and non-binding arbitration shall be conditions precedent to any litigation of the warranty and construction defect claims against the developer. All professional fees and expenses reasonably incurred by the association with regard to the mediation or arbitration, or both, shall be borne by the owners, including the developer, in the same manner as common expenses are allocated and paid by the association promptly upon the receipt of written authorization of the council.

(5) In the event that no settlement agreement and releases are executed with respect to any completed common elements or improvements during the period of developer control of the governing board of the association, any statutes of limitation or repose applicable to that association concerning common elements, including, but not limited to statutory warranties, shall be extended for a period of one year after the assumption of control of the governing board by owners other than the developer.

(6) The procedures set forth in this section shall also apply to and be binding upon the developer and the association after the unit owners, other than the developer, assume control of the governing board of the association; provided, however, that the governing board after that transition shall not be bound by the recommendations of the council of owners. The governing board controlled by the owners may vote to abolish the council of owners at any time after the owners have assumed control of the governing board.

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

41. Section 6 of P.L.1993, c.30 (C.45:22A-48) is amended to read as follows:

6. The 【Commissioner of Community Affairs】 Commission on Shared Ownership Communities shall cause to be prepared and distributed, for the use and guidance of associations, 【executive】 governing boards and 【administrators】 professionals hired by such boards to assist them, explanatory materials and guidelines to assist them in achieving proper and timely compliance with the requirements of P.L.1993, c.30 (C.45:22A-43 et al.) and with the requirements of P.L. , c. (C.) (pending before the

Legislature as this bill). Such guidelines may include the text of model bylaw provisions suggested or recommended for adoption.

The commission shall also make available, on an Internet web site maintained by it, descriptions of the outcomes of dispute resolution procedures overseen by the commission, indexed by subject matter.

The commission shall publish a quarterly newsletter to be furnished to any member of any association requesting it and shall also publish the newsletter electronically for viewing on the Internet.

[Failure or refusal of an association or executive board to make proper amendment or supplementation of its bylaws prior to the effective date of P.L.1993, c.30 (C.45:22A-43 et al.) shall not, however, affect their obligation of compliance therewith on and after that effective date.**]** Any owner or tenant of an owner in a shared ownership community may seek the assistance of the Commission on Shared Ownership Communities pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill) to address the failure of an association to make proper amendment or supplementation of its bylaws in order to comply with any statutory requirements.

(cf: P.L.1993, c.30, s.6)

42. Section 14 of P.L.1979, c. 157 (C.46:8B-14) is amended to read as follows:

14. The association, acting through its officers or governing board, shall be responsible for the performance of the following duties, the costs of which shall be common expenses:

(a) The maintenance, repair, replacement, cleaning and sanitation of the common elements.

(b) The assessment and collection of funds for common expenses and the payment thereof.

(c) The adoption, distribution, amendment and enforcement of rules governing the use and operation of the condominium and the condominium property and the use of the common elements, including but not limited to the imposition of reasonable fines, assessments and late fees upon unit owners, if authorized by the master deed or bylaws, subject to the right of a majority of unit owners to change any such rules.

(d) The maintenance of insurance against loss by fire or other casualties normally covered under broad-form fire and extended coverage insurance policies as written in this State, covering all common elements and all structural portions of the condominium property and the application of the proceeds of any such insurance to restoration of such common elements and structural portions**[** if such restoration shall otherwise be required under the provisions of this act or the master deed or bylaws**]**.

(e) The maintenance of insurance against liability for personal injury and death for accidents occurring within the common elements whether limited or general and the defense of any actions brought by reason of injury or death to person, or damage to property occurring within such common elements and not arising by reason of any act or negligence of any individual unit owner.

(f) The master deed or bylaws may require the association to protect blanket mortgages, or unit owners and their mortgagees, as their respective interest may appear, under the policies of insurance provided under clauses (d) and (e) of this section, or against such risks with respect to any or all units, and may permit the assessment and collection from a unit owner of specific charges for insurance coverage applicable to his unit.

(g) The maintenance of ⟦accounting⟧ records, in accordance with generally accepted accounting principles, open to inspection at reasonable times by unit owners. Such records shall include:

(i) A record of all receipts and expenditures.

(ii) An account for each unit setting forth any shares of common expenses or other charges due, the due dates thereof, the present balance due, and any interest in common surplus.

<u>(iii) all items required pursuant to section 19 of P.L. , c. (C.) (pending before the Legislature as this bill).</u>

(h) Nothing herein shall preclude any unit owner or other person having an insurable interest from obtaining insurance at his own expense and for his own benefit against any risk whether or not covered by insurance maintained by the association.

(i) Such other duties as may be set forth in the master deed or bylaws.

(j) An association shall exercise its powers and discharge its functions in a manner that protects and furthers or is not inconsistent with the health, safety and general welfare of the residents of the community.

(k) An association shall provide a fair and efficient procedure for the resolution of ⟦housing-related⟧ disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation. <u>Any costs associated with the procedure shall be borne by the association as a common expense, and no costs shall be assessable against any individual owner or owners.</u> A person other than an officer of the association, a member of the governing board or a unit owner involved in the dispute shall be made available to resolve the dispute. ⟦A unit owner may notify the Commissioner of Community Affairs if an association does not comply with this subsection. The commissioner shall have the power to order the association to provide a fair and efficient procedure for the resolution of disputes⟧ <u>A unit owner who has availed himself of the dispute resolution procedures provided by his association, but</u>

who does not consider the matter resolved, may file a request for dispute resolution services with the Commission on Shared Ownership Communities, established pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).
(cf: P.L.1996, c.79, s.2)

43. Section 12 of P.L.1969, c.257 (C.46:8B-12) is amended to read as follows:

The association provided for by the master deed shall be responsible for the administration and management of the condominium and condominium property, including but not limited to the conduct of all activities [of common interest to] on the common property of the unit owners. The association may be any entity recognized by the laws of New Jersey, including but not limited to a business corporation or a nonprofit corporation. Condominium associations established after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be incorporated as nonprofit corporations.
(cf: P.L.1969, c.257, s. 12)

44. Section 2 of P.L.1979, c. 157 (C.46:8B-12.1) is amended to read as follows:

2. a. [When] For associations formed prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), when unit owners other than the developer own 25% or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect not less than 25% of the members of the governing board or other form of administration of the association. Unit owners other than the developer shall be entitled to elect not less than 40% of the members of the governing board or other form of administration upon the conveyance of 50% of the units in a condominium. Unit owners other than the developer shall be entitled to elect all of the members of the governing board or other form of administration upon the conveyance of 75% of the units in a condominium. However, when some of the units of a condominium have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business, the unit owners other than the developer shall be entitled to elect all of the members of the governing board or other form of administration.

Notwithstanding any of the provisions of subsection a of this section, the developer shall be entitled to elect at least one member of the governing board or other form of administration of an association as long as the developer holds for sale in the ordinary course of business one or more units in a condominium operated by the association.

b. Within 30 days after the unit owners other than the developer are entitled to elect a member or members of the governing board or other form of administration of an association, the association shall call, and give not less than 20 days' nor more than 30 days' notice of, a meeting of the unit owners to elect the members of the governing board or other form of administration. The meeting may be called and the notice given by any unit owner if the association fails to do so.

c. If a developer holds one or more units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

(1) Assessment of the developer as a unit owner for capital improvements.

(2) Any action by the association that would be detrimental to the sales of units by the developer. However, an increase in assessments for common expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

On or after the after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), elections for and control of a governing board of an association shall be in accordance with section 5 of P.L.1993, c.30 (C.45:22A-47).

d. ⟦Prior to, or not more than 60 days after, the time that unit owners other than the developer elect a majority of the members of the governing board or other form of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously,⟧ When control of an association is required to be relinquished by a developer pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), the developer shall deliver to the association all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

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

(2) A certified copy of the association's articles of incorporation, or if not incorporated, then copies of the documents creating the association.

(3) A copy of the bylaws.

(4) The minute books, including all minutes, and other books and records of the association, if any.

(5) Any house rules and regulations which have been promulgated.

(6) Resignations of officers and members of the governing board or other form of administration who are required to resign

because the developer is required to relinquish control of the association.

(7) An accounting for all association funds, including capital accounts and contributions.

(8) Association funds or control thereof.

(9) All tangible personal property that is property of the association, represented by the developer to be part of the common elements or ostensibly part of the common elements, and an inventory of that property.

(10) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the developer, his agent, or an architect or engineer authorized to practice in this State that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements. If the condominium property has been declared a condominium more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph shall not apply.

(11) Insurance policies.

(12) Copies of any certificates of occupancy which may have been issued for the condominium property.

(13) Any other permits issued by governmental bodies applicable to the condominium property in force or issued within 1 year prior to the date the unit owners other than the developer take control of the association.

(14) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(15) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(16) Leases of the common elements and other leases to which the association is a party.

(17) Employment contracts, management contracts, maintenance contracts, contracts for the supply of equipment or materials, and service contracts in which the association is one of the contracting parties and maintenance contracts and service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly to pay some or all of the fee or charge of the person or persons performing the service.

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

(cf: P.L.1979, c.157, s.2)

45. Section 15 of P.L.1979, c.157 (C.46:8B-15) is amended to read as follows:

15. Subject to the provisions of the master deed, the bylaws, rules and regulations and the provisions of this act or other applicable law, the association shall have the following powers:

(a) Whether or not incorporated, the association shall be an entity which shall act through its officers and may enter into contracts, bring suit and be sued. If the association is not incorporated, it may be deemed to be an entity existing pursuant to this act and a majority of the members of the governing board or of the association, as the case may be, shall constitute a quorum for the transaction of business. Process may be served upon the association by serving any officer of the association or by serving the agent designated for service of process. Service of process upon the association shall not constitute service of process upon any individual unit owner.

(b) The association shall have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein or accessible therefrom or for making emergency repairs necessary to prevent damage to common elements or to any other unit or units. The association may charge the unit owner for the repair of any common element damaged by the unit owner or his tenant.

(c) The association may purchase units in the condominium and otherwise acquire, hold, lease, mortgage and convey the same. It may also lease or license the use of common elements in a manner not inconsistent with the rights of unit owners.

(d) The association may acquire or enter into agreements whereby it acquires leaseholds, memberships or other possessory or use interests in lands or facilities including, but not limited to country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the condominium property, intended to provide for the enjoyment, recreation or other use or benefit of the unit owners. If fully described in the master deed or bylaws, the fees, costs and expenses of acquiring, maintaining, operating, repairing and replacing any such memberships, interests and facilities shall be common expenses. If not so described in the master deed or bylaws as originally recorded, no such membership interest or facility shall be acquired except pursuant to amendment of or supplement to the master deed or bylaws duly adopted as provided therein and in this act. In the absence of such amendment or supplement, if some but not all unit owners desire any such acquisition and agree to assume among themselves all costs of acquisition, maintenance, operation, repair and replacement thereof, the association may acquire or enter into an agreement to acquire the same as limited common elements appurtenant only to the units

of those unit owners who have agreed to bear the costs and expenses thereof. Such costs and expenses shall be assessed against and collected from the agreeing unit owners in the proportions in which they share as among themselves in the common expenses in the absence of some other unanimous agreement among themselves. No other unit owner shall be charged with any such cost or expense; provided, however, that nothing herein shall preclude the extension of the interests in such limited common elements to additional unit owners by subsequent agreement with all those unit owners then having an interest in such limited common elements.

(e) The association may levy and collect assessments duly made by the association for a share of common expenses ⟦or otherwise⟧, including any other moneys duly owed the association, upon proper notice to the appropriate unit owner, together with interest thereon, late fees and reasonable attorneys' fees, if authorized by the master deed or bylaws.

All funds collected by an association shall be maintained separately in the association's name. For investment purposes only, reserve funds may be commingled with operating funds of the association. Commingled operating and reserve funds shall be accounted for separately, and a commingled account shall not, at any time, be less than the amount identified as reserve funds. A manager or business entity managing a condominium, or an agent, employee, officer, or director of an association, shall not commingle any association funds with his or her funds or with the funds of any other condominium association or the funds of another association as defined in section 3 of P.L.1977, c.419 (C.45:22A-23).

⟦If⟧ <u>Other than during the period of developer control as set forth in section 5 of P.L.1993, c.30 (C.45:22A-47), if</u> authorized by the master deed or bylaws, the association may levy and collect a capital contribution, membership fee or other charge upon the ⟦initial sale or subsequent⟧ resale of a unit, which collection shall be earmarked for the purpose of maintenance of or improvements to common elements to defray common expenses ⟦or otherwise⟧, provided that such charge shall not exceed nine times the amount of the most recent monthly common expense assessment for that unit.

(f) If authorized by the master deed or bylaws, the association may impose reasonable fines upon unit owners for failure to comply with provisions of the master deed, bylaws or rules and regulations, subject to the following provisions:

A fine for a violation or a continuing violation of the master deed, bylaws or rules and regulations shall not exceed ⟦the maximum monetary penalty permitted to be imposed for a violation or a continuing violation under section 19 of the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-19)⟧ <u>$50 per violation per day, or a total of $2,500 for continuing violations</u>.

On roads or streets with respect to which Title 39 of the Revised Statutes is in effect under section 1 of P.L.1945, c.284 (C.39:5A-1), an association may not impose fines for moving automobile violations.

A fine shall not be imposed unless the association has filed the required information with the Commission on Shared Ownership Communities pursuant to section 10 of P.L. , c. (C.) (pending before the Legislature as this bill) and the unit owner is given written notice of the action taken and of the alleged basis for the action, and is advised of the right to participate in a dispute resolution procedure in accordance with subsection (k) of section 14 of P.L.1969, c.257 (C.46:8B-14), and advised of the further right to file an appeal with the Commission on Shared Ownership Communities. A unit owner who does not believe that the dispute resolution procedure has satisfactorily resolved the matter shall not be prevented from seeking dispute resolution with the Commission on Shared Ownership Communities in the manner provided under section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), or from seeking a judicial remedy in a court of competent jurisdiction, in which case the filing of a lien for any fine imposed shall be postponed until a final determination has been made concerning the fine by either the commission or the court.

(g) Such other powers as may be set forth in the master deed or bylaws, if not prohibited by P.L.1969, c.257 (C.46:8B-1 et seq.) or any other law of this State.

(cf: P.L.2007, c.165, s.1)

46. This act shall take effect immediately.

STATEMENT

It has been more than 30 years since the Legislature enacted "The Planned Real Estate Development Full Disclosure Act," (PREDFDA), P.L.1977, c.419 (C.45:22A-21 et seq.) to provide State oversight of the marketing of planned developments to prospective purchasers, through a review of documents and advertisements, as well as requiring that certain disclosures be made by a developer to a buyer. Marketing techniques are important because membership in a homeowner association is mandatory for a purchaser of a home in community which has shared property and facilities, such as a condominium, cooperative, or a single family home in a planned development. The shared property of such communities is owned collectively by all of the individual home purchasers. These communities are referred to as “shared ownership communities” in the bill and are often known as common interest communities.

It has also been more than 10 years since the Assembly Task Force to Study Homeowners' Associations released its report containing more than 30 recommendations calling for changes in the laws, in order to provide more protections for homeowners. This bill addresses most of those recommendations, as well as updating the laws requiring disclosure by developers and clarifying the powers and obligations of governing boards of associations and the rights of owners living in such communities..

The bill revises the manner in which information should be provided prospective purchasers through the Public Offering Statement, (POS) a document required to be provided to prospective purchasers by developers of such communities. Although New Jersey's statutes require certain disclosures by a developer during the sales phase of shared ownership communities, these disclosures have too often been inadequate to properly inform prospective purchasers. Items which are likely to be of extreme importance to a purchaser, such as obligations, governance structures, potential future liabilities, restrictions, or, even in some cases, hidden loans on the part of a developer to the association, may be buried deep within the document, and not disclosed adequately, if at all. The sheer volume of information, which varies widely by developers on matters which could be standardized, also hinders adequate review by the State.

The bill requires the POS, and the registration of developments process, to be revised and streamlined. A developer will be required to submit information on standardized forms and in an electronic format. Governance structures will be standardized and developers allowed to highlight variations that they wish to apply. Processing times for registrations of developments will be reduced under the bill from 90 to 45 days for standardized submissions. The information in the Public Offering Statement to be disclosed to a prospective purchaser will be revised to be quickly accessed by the reader, as well as indexed under logical headings, such as pets, parking, restrictions and fees. An executive summary of the offering is required to be made in plain language, explaining the rights, liabilities, obligations and governing form applicable to the association.

The bill also addresses the problem that planned communities with fewer than 100 units have been exempted from registration under the act. This has been interpreted by the administering agency as exempting developers from providing a POS, thus providing no protections for purchasers in smaller communities. The exemption has also been extended by regulations to all low and moderate income (*Mount Laurel*) communities of any size. Exemption from the PREDFDA also clouds many other issues, such as when a developer of a planned community must turn over the assets to the homeowners. The bill removes these exemptions, and

requires a Public Offering Statement for every prospective purchaser in a planned community. The regressive flat rate development charge currently charged to developers of planned communities is replaced under the bill with a per unit fee of 3/100 of one percent (.0003) of the sales price. These fees are currently required to be used to defray the costs of the State's review under the statute, and will continue to be used for that purpose, as well as to offset costs for other homeowner protections added by the bill. The change from a flat rate fee to a per unit fee will result in lower fees on lower priced homes, and in most instances will result in decreased fees being paid per development than is the case now.

In addition, the bill addresses problems which arise in what may be termed the "governance" stage of a homeowners' association. After the developer has sold at least 75 percent of the homes planned for the community, total control of the management of the commonly-owned property is transferred from the developer to the home owners in the community. Experience shows that owners are not adequately prepared for this event.

The bill allows owners to have earlier exposure to operational issues and input into governance matters, as well as requires boards to adopt principles of democratic and transparent governance. The bill requires the creation of an owners' coordinating council in each association, consisting of at least three owners, during the time period that the developer controls the voting interest of the association governing board. The owners' coordinating council will function as a steering committee for owners, and serve as the election monitor when owners other than the developer are entitled by statute to be elected as voting members of the governing board. In addition, the owners' council will be permitted to bring claims to a commission formed under the bill, on matters affecting construction deficiencies in the common elements during the period of developer control. The inability of owners to file warranty claims concerning defects in common elements was found to be a problem by the State Commission of Investigation in its report of abuses in the new home construction industry.

The bill addresses the inconsistency in various statutes affecting owners' rights in different types of shared ownership communities, by amending the laws to eliminate these inconsistencies.

The bill creates a commission in, but not of, the Department of Law and Public Safety, to serve as a State resource center, liaison and educational resource to owners and their shared ownership community associations, and to coordinate low cost, reliable alternative dispute resolution (ADR) services to these associations. The commission will also serve as a hearing entity concerning violations of statutory law pertaining to associations. The commission is modeled after a very successful program created by

Montgomery County, Maryland for homeowner associations under its jurisdiction.

The bill addresses a critical need of the many owners whose associations have not provided any ADR or ADR which is not impartial. Many associations have adopted a process too biased or expensive to serve as a viable alternative to litigation. Because associations can charge each owner the cost of the board's attorney as a common expense, many boards are quick to invite litigation, rather than amicably resolve disputes. In some instances, even when a board's actions blatantly violate bylaws, or are flagrantly illegal, State and local officials are often unwilling or unable to get involved, citing the "private" nature of such communities. This places an undue financial burden on individual owners, many of whom are senior citizens on fixed incomes.

The bill also addresses the general lack of information about community associations, and a lack of standards for the manner in which they may operate. The commission created by the bill and the State entity responsible for oversight of marketing of new homes is charged with creating a booklet providing detailed information to owners concerning general information, State and federal laws, resources available, and the standards of governance established for association governing boards. The commission will be responsible for posting the information to a web site.

The commission is also required under the bill to promulgate standards for transparent and democratic governance in the operation of shared ownership communities. The standards may be more specific than the provisions of the bill, but must comport with the Legislature's intent to foster open, democratic processes in such communities.

The funding for the activities of the commission and the alternative dispute resolution services will come from fees already collected and earmarked for protections of owners under the "The Planned Real Estate Development Full Disclosure Act." The bill requires that all associations provide certain information annually to the Commission on Shared Ownership Communities. There is no fee to file under the bill, but those associations that do not provide the information will not be eligible as qualified private communities to seek reimbursement from their municipality for services provided to them, such as trash, leaf and snow removal, and, in addition, will not be permitted to impose fines upon members, or to receive approval to file liens based on fines imposed.

In order to recognize the governmental nature of homeowners associations, and to provide the best enforcement of statutory protections for prospective homebuyers in shared ownership communities, the bill moves the responsibility for the "The Planned Real Estate Development Act" to a new bureau within the Division of Consumer Affairs in the Department of Law and Public Safety,

to be known as the "Bureau of Homebuyers Protection." The Division of Consumer Affairs currently has significant experience in administering consumer protection programs; for example it has the responsibility for overseeing the "Home Improvement Contractor's Registration Act" and "the consumer fraud act." In addition, relocating homebuyer protections will help to minimize conflicts of interests concerning builders under other programs in the Department of Community Affairs, such as its role as the enforcer of construction codes, licensing of code inspectors, and overseeing the "New Home Warranty Program."