

CHAPTER 106

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

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

C.45:22A-45.1 Findings, declarations relative to governance of common interest community associations.

1. The Legislature finds and declares that:

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

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

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

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

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

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

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

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

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

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

C.45:22A-23 Definitions.

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. However, as used in P.L.1993, c.30 (C.45:22A-43 et seq.), "owner" means any person owning a unit, or an "owner" or holder of a "proprietary lease," as those terms are defined under subsections i. and k. of section 3 of "The Cooperative Recording Act of New Jersey," P.L.1987, c.381 (C.46:8D-3), if the development is a cooperative.

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

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

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).

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

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. "Association member" means the owner of a unit within a planned real estate development, or a unit's tenant to the extent that the governing documents of the planned real estate development permit tenant membership in the association, and the developer to the extent that the development contains unsold lots, parcels, units, or interests pursuant to subsection c. of section 1 of P.L.1993, c.30 (C.45:22A-43). This definition shall not be construed to provide the developer a different transition obligation than that required pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), or to require that the developer is allowed to vote in executive board elections.

r. "Good standing" means the status – solely with respect to eligibility to (1) vote in executive board elections, (2) vote to amend the bylaws, and (3) nominate or run for any membership position on the executive board – applicable to an association member who is current on the payment of common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed, and which association member has not failed to satisfy a judgment for common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed. An association member is in good standing if he is in full compliance with a settlement agreement with respect to the payments of assessments, legal fees or other charges lawfully assessed, or the association member has a pending, unresolved dispute concerning charges assessed which dispute has been initiated: through a valid alternative to litigation pursuant to subsection c. of section 2 of P.L.1993, c.30 (C.45:22A-44); through subsection (k) of section 14 of the "Condominium Act," P.L.1969, c.257 (C.46:8B-14); or through a pertinent court action.

s. "Voting-eligible tenant" means a tenant of a unit within a planned real estate development in which:

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

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

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

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

C.45:22A-42 Inapplicability of act.

22. The provisions of P.L.1977, c.419 (C.45:22A-21 et seq.), concerning the formation and registration of planned real estate developments, shall not apply to any portion of a planned real estate development which has on the effective date of P.L.1977, c.419 (C.45:22A-21 et seq.):

a. Its building permit or permits; or

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

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

C.45:22A-43 Organization of association.

1. a. A developer 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 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 or nonprofit corporation, unincorporated association, or any other form permitted by law. The application of P.L.1993, c.30 (C.45:22A-43 et seq.) to the association of an existing planned real estate development shall not be limited by:

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

(2) the development's date of establishment.

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

c. Membership in the association of a planned real estate development shall be comprised of each owner within the planned real estate development, and may include the developer if the development contains unsold lots, parcels, units, or interests. An association may permit tenant participation in executive board elections, tenant membership in the

association, or both. A voting-eligible tenant shall have only the same voting rights as the owner of the unit that the tenant leases, and such voting rights shall be in place of and not in addition to the rights of the owner of the leased unit, except as permitted under paragraph (9) of subsection c. of section 6 of P.L.2017, c.106 (C.45:22A-45.2). Pursuant to paragraph (9) of subsection c. of section 6 of P.L.2017, c.106 (C.45:22A-45.2), the votes associated with a unit shall not be altered by the participation of voting-eligible tenants.

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

C.45:22A-45 Election of executive board; powers.

3. a. The form of administration of an association organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43) shall provide for the election of an executive board, elected by the association members, and voting-eligible tenants where applicable, 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.

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 board may act in all instances on behalf of the association.

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

d. During control of the executive 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.

C.45:22A-45.2 Executive board elections.

6. a. An association shall hold executive board elections in accordance with the provisions of its governing documents, including validly-adopted executive board rules, that do not conflict with the provisions of this section. If such documents do not set a specific time or interval, the elections shall be held at two-year intervals. If an association has not held an election in compliance with its governing documents in two or more years, it shall hold an election within 90 days of the submission to any current executive board member of a petition signed by 25 or more percent of association members in good standing, but in no event less than the number of association members required to meet the quorum requirements set forth in the governing documents. If an association has no executive board members and association members fail to act on petition or by majority, any association member or group thereof, at common expense and, upon written notice to all owners, may petition a court of competent jurisdiction for authority to act temporarily in the interests of the association and to organize and hold an election within 90 days of the date of the court order. Any proxies used by an association must contain a prominent notice that use of the proxy is voluntary on the part of the granting owner, that it can be revoked at any time before the proxy holder casts a vote, and that absentee ballots are available. An association may not use proxies for an executive board member election without also making absentee ballots available.

b. An association of a development with fewer than 50 units shall ensure an executive board election system that includes: (1) the provision of election notice, (2) the provision of the ability to nominate and vote for any association member in good standing, (3) the provision of an opportunity to review any candidacy qualifications such that the owner is permitted to be a candidate for election to the board, (4) the provision of ready access to information on when and how to vote, and (5) the counting of ballots and verification of

eligibility to vote, all of which shall be conducted in a non-fraudulent manner. Such association shall also be subject to the requirements of paragraphs (9) and (10) of subsection c. of this section.

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

(1) An association shall not provide for a term of an executive board member to be for more than 4 years, provided that nothing shall prevent an executive board member from continuing to serve until his or her successor is duly qualified and elected.

(2) An association shall not prohibit a voting-eligible tenant, where applicable, from casting a vote allocated to a unit if the bylaws otherwise permit tenant participation in an election of executive board members nor prohibit an individual acting pursuant to a valid power of attorney or proxy from casting a vote.

(3) An association shall provide written notice to all association members no later than 30 days prior to the date for the mailing of the notice of the meeting set forth in paragraph (5) of this subsection that informs association members of the right to nominate themselves or other association members in good standing for candidacy to serve on the executive board.

(4) An association, subject to the exceptions under subsection f. of this section, shall not prohibit an association member in good standing from nominating himself or herself, or any other association member in good standing as a candidate for any membership position on the executive board, so long as the nomination is made prior to the mailing of ballots or proxies to the association members, which mailing shall occur no earlier than: (a) the day following the expiration of the time period within which candidates must be nominated, or (b) where no expiration date is set forth for nomination of candidates, then the business day prior to the mailing of the notice of the election, required pursuant to paragraph (5) of this subsection. The period for submitting nominations shall not be less than 14 days from the mailing of the request for nominations.

(5) An association shall provide association members written notice of an election by personal delivery, mail, or electronic means, no less than 14 nor more than 60 days prior to the meeting at which an election of executive board members is scheduled. This notice shall include a proxy ballot and an absentee ballot, unless prohibited by the bylaws, which ballots shall list in alphabetical order by last name the names of all candidates nominated pursuant to paragraph (4) of this subsection. In the case of mailing, the notice shall be effective when deposited in the mailbox with proper postage. The notice may only be sent by electronic means if either (a) the affected association member, or voting-eligible tenant where applicable, has agreed in writing to accept notice by electronic means; or (b) the governing documents permit electronic notices, provided another form of voting by absentee balloting or proxy voting is available.

(6) An association shall use ballots, whether paper ballots or electronic ballots, that contain the names of all persons nominated as a candidate for the executive board.

(7) An association shall not prohibit any association member in good standing, or voting-eligible tenant where applicable, subject to the exceptions under subsection f. of this section and any limitation on the number of votes per unit permitted under paragraph (9) of this subsection, from voting for any nominated candidate in an executive board election.

(8) An association shall not prevent voting for an executive board member by electronic means where the executive board determines to employ voting in such manner and an association member, or voting-eligible tenant where applicable, consents to casting a vote in such manner.

(9) An association shall not provide for an allocation of votes other than one vote for each unit, or such larger number of equal votes per unit as may be set forth in the governing documents of the association, except (a) where the bylaws or other governing document provide for the voting interest to be proportional to a unit's value or size, (b) where the governing documents permit more than one vote to be cast by each unit on an equal basis or a basis consistent with each unit's value or size, or (c) where the governing documents do not set forth the number of votes that may be cast by each unit, then in accordance with a rule adopted by the executive board that allows more than one vote to be cast by each unit, provided such rule assigns an equal number of votes to each unit.

(10) Election procedures shall not be established or administered in any way to prohibit participation by the residents of low or moderate income housing units.

d. Initial executive board elections in condominium associations, governed under the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), shall follow the notice timeline under subsection b. of section 2 of P.L.1979, c.157 (C.46:8B-12.1), and shall not be subject to this section.

e. Whether or not formed as a nonprofit corporation, associations of developments of 50 or more units shall conform to the requirements of the "New Jersey Nonprofit Corporation Act," P.L.1983, c.127 (N.J.S.15A:1-1 et seq.) regarding the counting of ballots.

f. (1) It shall be permissible for the bylaws of the association to provide:

(a) for the association members, and voting-eligible tenants where applicable, of a planned real estate development with units of different use types to nominate and vote for some members of the executive board and, pursuant to the mixed-use development's governing documents, have other members of the executive board nominated and elected by association members and voting-eligible tenants of units of a different use type;

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

(c) for a limitation on the number of executive board members nominated and elected by only certain association members, and voting-eligible tenants where applicable, if that limit is based upon a classification intended to further the election of one or more executive board members by the association members, and voting-eligible tenants where applicable, of affordable housing units that represent a minority of the units in a planned real estate development;

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

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

(2) The executive board of an umbrella or master association that does not directly contain units need not be elected by individuals who are association members, and voting-

eligible tenants where applicable, with units within the geographical area of the umbrella or master association, provided the members of the executive board serve as executive board members of another planned real estate development executive board, and have been nominated and elected by the association members, and voting-eligible tenants where applicable, with units in that planned real estate development, in compliance with this section.

(3) Except with regard to a planned real estate development containing fewer than 50 units, and any appointment by the developer permitted pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), an association shall:

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

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

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

C.45:22A-46 Bylaws; requirements; amendments.

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 board, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance by all association members, and voting-eligible tenants where applicable, and adequate notice of any such meeting shall be given to all association members, and voting-eligible tenants where applicable, in such manner as the bylaws shall prescribe; except that the executive 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 association members, and voting-eligible tenants where applicable, the participation of unit association members, and voting-eligible tenants where applicable, in the proceedings or the provision of a public comment session shall be at the discretion of the executive board, minutes of the proceedings shall be taken, and copies of those minutes shall be made available to all association members, and voting-eligible tenants where applicable, before the next open meeting.

b. The method of calling meetings of association members, and voting-eligible tenants where applicable, the percentage of association members, and voting-eligible tenants where applicable, or voting rights required to make decisions and to constitute a quorum. The bylaws may, nevertheless, provide that an individual association member, and a voting-eligible tenant where applicable, may waive notice of meetings in writing, or may act by written agreement without meetings.

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

d. (1) 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.

(2) If association bylaws provide for no method of their amendment by a vote of the association members open to all association members, or only allow association members to amend the bylaws through a majority vote exceeding a two-thirds majority, then the association members may amend the bylaws by an affirmative vote of a majority of the total authorized votes in the association. If the bylaws do not provide for a method by which the association members may call a meeting of the association members to conduct a vote to amend the bylaws or do not contain provisions concerning the subject matter of subparagraphs (a) through (f) of this paragraph, then a vote concerning an amendment to the bylaws shall be conducted as follows:

(a) fifteen percent of the association members may request a meeting of the association's membership by executing a document requesting that a special meeting of the association membership be held, or if the annual meeting of the association membership is scheduled to occur within 60 days of the date of the request, then the amendment vote shall be held at the annual meeting;

(b) if the vote is not scheduled to take place at the annual meeting of the association, the executive board shall schedule the special meeting of the association membership to occur within 60 days of the receipt of the request. Notice of the meeting shall be provided to the association members and voting-eligible tenants, where applicable, at least 14 days prior to the date of the meeting. The special meeting shall be held at a reasonable time that is likely to permit most association members to attend;

(c) the language of the proposed amendment shall be unambiguous and consistent with applicable law and with the provisions of the bylaws that are not proposed to be amended, and if not in such condition shall be revised to satisfy that requirement. Upon satisfaction of this requirement, the amendment shall be mailed, hand-delivered or, if the bylaws permit, electronically delivered, together with the notice of the meeting to the association membership at least 10 days prior to the meeting;

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

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

(f) when an amendment is approved, a copy of the approved amendment shall be provided to all association members, and the association shall promptly record the amendment in the county recording office where the bylaws were recorded.

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

(4) For the purposes of paragraph (2) of this subsection, the number of total authorized votes in the association shall be based on the whole number of units owned by someone entitled to association membership after subtracting those association members who are ineligible to vote because they are not in good standing.

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

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

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

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

C.45:22A-47 Surrender of control to owners.

5. a. 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 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 board shall be elected by the owners, and voting-eligible tenants where applicable.

(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 board shall be elected by the owners, and voting-eligible tenants where applicable.

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

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 executive board members. Unless the bylaws provide for an alternate approach to allocating votes pursuant to paragraph (9) of subsection c. of section 6 of P.L.2017, c.106 (C.45:22A-45.2), each unit conveyed to an

owner shall be entitled to one vote regardless of the number of association members, and voting-eligible tenants where applicable, residing in a unit. A developer may surrender control of the executive board of the association before the time specified in subsection a. of this section, if the association members, and voting-eligible tenants where applicable, agree by a majority vote to assume control.

c. Upon assumption by the owners of control of the executive board of the association, the developer shall 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 within 60 days of that transition date, established pursuant to this section.

d. The association when controlled by the owners, and voting-eligible tenants where applicable, 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.

9. This act shall take effect immediately, except that paragraphs (1) through (9) of subsection c. of section 6 concerning notice, nominations, ballot content, voting, and vote distribution in executive board elections shall remain inoperative until the first day of the third month next following enactment and shall be applicable to each executive board election on or after that date.

Approved July 13, 2017.