

**To: New Jersey Law Revision Commission**

**From: John Cannel**

**Re: Common Interest Ownership**

**Date: November 7, 2016**

## **MEMORANDUM**

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The final Report released at the October meeting constitutes a part of the Uniform Common Interest Ownership Act. It provides a framework law for common interest communities. Over the last months, a number of Commissioners expressed the desire that other issues related to common interest communities be addressed in later projects. The next logical piece to address is the subject of community board elections. This Memorandum proposes that continuation.

The subject of elections is not as controversial as some others. There are current New Jersey statutes on common interest community elections, but they do not cover all communities. A UCIOA based set of provisions would provide a comprehensive set of rules. Informal discussions have indicated receptivity to a Law Revision report on this subject. While there is a bill, S2492 (attached to this Memorandum as Appendix A), that would achieve much of what a UCIOA approach would, it would do that by amending a number of existing laws and adding some new sections. The substance of the bill has wide support. However it is recognized that its approach is necessitated by the lack of a comprehensive common interest framework. The recent Commission Report provides that framework and allows a more thorough and understandable implementation of the widely accepted substantive principles.

This Memorandum attempts to take the substantive provisions in S2492 and incorporate them in a form compatible with the UCIOA context so that all interested parties, including Legislators focusing in this area, have the opportunity to see how the proposed parts of the law would function as a more coherent whole. A first, rough, draft of that follows:

### **MANAGEMENT OF COMMON INTEREST COMMUNITY; ELECTIONS**

#### **Organization of unit owners association.**

A unit owners association must be organized no later than the date the first unit in the common interest community is conveyed. The membership of the association at all times shall be comprised exclusively of each unit owner. If permitted by the association's bylaws, a tenant may also be entitled to association membership. However, a tenant entitled to association membership shall have only the same voting rights as unit owners if the tenant is a voting-eligible tenant. the voting influence of a unit shall not be altered by the number of association members, and voting-eligible tenants, who own or reside in the unit. Following termination of the common interest community, the membership of the association consists of all former unit owners entitled to distributions of proceeds under Section 2-118 or their heirs, successors, or assigns. The association must have an executive board for the election of an executive board

elected by the association members and voting-eligible tenants The association must be organized as a profit or nonprofit corporation, trust, limited liability company, partnership, unincorporated association, or any other form of organization authorized by the law of this state.

Source: UCIOA 3-101, S2492

### **Bylaws.**

(a) The bylaws of the association must:

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

(2) provide for election by the executive board or, if the declaration requires, by the unit owners, of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

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

(4) specify the powers the executive board or officers may delegate to other persons or to a managing agent;

(5) specify the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) specify a method for the unit owners to amend the bylaws;

(7) contain any provision necessary to satisfy requirements in this act or the declaration concerning meetings, voting, quorums, and other activities of the association; and

(8) provide for any matter required by law of this state other than this act to appear in the bylaws of organizations of the same type as the association.

(9) Require 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 unit owners, and voting-eligible tenants where applicable, and adequate notice of any such meeting shall be given to all unit owners, and voting-eligible tenants where applicable, in the manner that the bylaws prescribe; except that the executive board may exclude or restrict attendance at those meetings, or portions of meetings, dealing with (A) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; (B) any pending or anticipated litigation or contract negotiations; (C) 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 (D) 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, and voting-eligible tenants where applicable, the participation of unit owners, 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 unit owners, and voting-eligible tenants where applicable, before the next open meeting.

(10) The method of calling meetings of unit owners, and voting-eligible tenants where applicable, the percentage of unit owners, and voting-eligible tenants where applicable, or voting

rights required to make decisions and to constitute a quorum. The bylaws may, nevertheless, provide that unit owners, and voting-eligible tenants where applicable, may waive notice of meetings or may act by written agreement without meetings.

b. Subject to the declaration and this act, the bylaws may provide;

(1) that tenants resident in units shall be eligible to vote as members of the community association, and

(2) any other necessary or appropriate matters, including matters that could be adopted as rules.

Source: UCIOA 3-106, Subsections (a)(9) and (a)(10) and (b)(2), S2492

### **Amendment of Bylaws**

a. If association 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 the members may amend the bylaws by an affirmative vote of two-thirds of the total authorized votes in the association. If the bylaws do not provide for a method by which the members may call a meeting of the 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:

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

(2) if the vote will not take place at the annual meeting of the association, the executive board shall schedule the special meeting of the membership to occur within 60 days of the receipt of the request, which special meeting shall be held between the hours of 7:00 p.m. and 8:00 p.m., except that if such day is a Sunday, the meeting shall be held on the next day thereafter;

(3) 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 membership at least 10 days prior to the meeting;

(4) 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;

(5) 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 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

(6) if the amendment is approved, the association shall promptly record the same in the county recording office where the bylaws were recorded.

c. 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.

d. 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 membership in the association after subtracting those owners ineligible to vote because they are not in good standing.

Source: S2492

### **Voting; Proxies; Ballots**

(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by absentee ballot pursuant to subsection (b)(4), by a proxy pursuant to subsection (c) or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d).

(b) At a meeting of unit owners the following requirements apply:

(1) Unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for determining the votes of unit owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(3) Unless a greater number or fraction of the votes in the association is required by this [act] or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a), a unit owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least [three] days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner.

(2) If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated or purports to be revocable without notice.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A person may not cast undirected proxies representing more than [15] percent of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, it shall also:

(A) indicate the number of responses needed to meet the quorum requirements;

(B) state the percent of votes necessary to approve each matter other than election of directors;

(C) specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than [three] days after the date the association delivers the ballot; and

(D) describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

(1) this section applies to lessees as if they were unit owners;

(2) unit owners that have leased their units to other persons may not cast votes on those specified matters; and

(3) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(f) Unit owners must also be given notice of all meetings at which lessees are entitled to vote.

(g) Votes allocated to a unit owned by the association must be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other than the association.

Source: UCIOA 3-110

### **Nomination and Election of Executive Board**

a. Notice of the right to nominate candidates for election to the executive board shall be mailed, hand-delivered or, where permitted by the bylaws, electronically delivered to each association member and each voting-eligible tenant at least 30 days prior to the meeting at which an election of the members of the executive board will be conducted.

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

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

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

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

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

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

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

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

e. Unless the declaration or bylaws provide for the voting interest of each unit to be proportional to the unit's value or size, each unit conveyed to an owner shall be entitled to one vote regardless of the number of association members, and voting-eligible tenants, who own or reside in a unit.

f. 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 the notice requirements under subsections a. and d. of this section.

g. (1) It shall be permissible if the declaration and bylaws so provide:

(A) for the association members and voting-eligible tenants of a common interest community with units of different use types to nominate and vote for some members of the executive board and 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 of a common interest community 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) to limit the number of executive board members nominated and elected by only certain association members, and voting-eligible tenants, 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, of affordable housing units that represent a minority of the units in a common interest community; and

(D) for the association members, and voting-eligible tenants, of a common interest community 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, 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;

(2) The executive board of a master association that does not directly contain units need not be elected by individuals who are association members, and voting-eligible tenants, with units within the geographical area of the master association, provided the members of the executive board serve as executive board members of another common interest community executive board, and have been nominated and elected by the association members, and voting-eligible tenants, with units in that common interest community, in compliance with this section.

(3) The requirements of this section do not apply to members of the executive board that may be appointed by the developer pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47).

Source: S2492

Appendix A

**SENATE, No. 2492**  
**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

INTRODUCED SEPTEMBER 8, 2016

**Sponsored by:**

**Senator ROBERT M. GORDON**

**District 38 (Bergen and Passaic)**

**Senator KEVIN J. O'TOOLE**

**District 40 (Bergen, Essex, Morris and Passaic)**

**Co-Sponsored by:**

**Senators Weinberg, Beck, Bateman, A.R.Bucco, Cardinale, T.Kean, Kyrillos, Oroho, Stack and Thompson**

**SYNOPSIS**

Enhances resident voting participation rights in common interest communities.

**CURRENT VERSION OF TEXT**

As reported by the Senate Community and Urban Affairs Committee on October 13, 2016, with amendments.

**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:

1. (New section) 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 tenants living in 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. Residents living under community associations should have the right to freely elect the members of the executive boards that govern the communities, and to run for executive board positions; and

f. It is necessary and in the public interest for the Legislature to enact legislation establishing basic election participation rights for the residents of common interest communities.

2. 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. Following termination of developer control of the executive board, pursuant to paragraph (3) of subsection a. of section 5 of P.L.1993, c.30

(C.45:22A-47), this definition shall not be construed to create a voting right, or any other right, for a prospective purchaser or prospective owner.

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 or the developer to the extent that the bylaws permit tenant or developer membership in the association pursuant to subsection b. of section 1 of P.L.1993, c.30 (C.45:22A-43).

r. "Good standing" means the status <sup>1</sup>, solely with respect to eligibility to vote in executive board elections or to amend the bylaws and eligibility to nominate or run for any membership position on the executive board,<sup>1</sup> assigned to unit owners who <sup>1</sup>[meet qualifications not more excessive than compliance with the development's governing documents, and who]<sup>1</sup> are current on the payment of <sup>1</sup>[all fees lawfully assigned to the unit] common expenses, late fees, interest on unpaid assessments, legal fees, or other charges

lawfully assessed, and who have not failed to satisfy a judgment for common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed<sup>1</sup>.

s. “Voting-eligible tenant” means a tenant of a unit within a planned real estate development that permits the tenant’s participation in executive board elections through its bylaws, but shall not include a tenant whose right to vote is derived solely as an agent of the unit owner through a proxy or power of attorney.

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

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

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.

b. Membership in the association of a planned real estate development shall be comprised exclusively of each unit owner within the planned real estate development, and may include the developer if the development contains unsold lots, parcels, units, or interests. If permitted by the association’s bylaws, a tenant may also be entitled to association membership. However, a tenant entitled to association membership shall have only the same voting rights as unit owners if the tenant is a voting-eligible tenant. Pursuant to subsection e. of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill), the voting influence of a unit shall not be altered by the number of association members, and voting-eligible tenants, who own or reside in the unit.

(cf: P.L.1993, c.30, s.1)

4. 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 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, 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.

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

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

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

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

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

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

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

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

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

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

e. Unless the bylaws provide for the voting interest of each unit to be proportional to the unit's value or size, each unit conveyed to an owner shall be entitled to one vote regardless of the number of association members, and voting-eligible tenants, who own or reside in a unit.

f. 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 the notice requirements under subsections a. and d. of this section.

g. (1) It shall be permissible:

(a) for the association members and voting-eligible tenants 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 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) to limit the number of executive board members nominated and elected by only certain association members, and voting-eligible tenants, 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, of affordable housing units that represent a minority of the units in a planned real estate development; and

(d) for the association members, and voting-eligible tenants, 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, 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;

(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, 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, with units in that planned real estate development, in compliance with this section.

(3) The requirements of this section do not apply to members of the executive board that may be appointed by the developer pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47).

6. 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 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 voting-eligible tenants where applicable, and adequate notice of any such meeting shall be given to all unit owners, 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 unit owners, and voting-eligible tenants where applicable, the participation of unit owners, 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 unit owners, and voting-eligible tenants where applicable, before the next open meeting.

b. The method of calling meetings of unit owners, and voting-eligible tenants where applicable, the percentage of unit owners, and voting-eligible tenants where applicable, or voting rights required to make decisions and to constitute a quorum. The bylaws may, nevertheless, provide that unit owners, and voting-eligible tenants where applicable, 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. (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, or only allow association members to amend the bylaws through a majority vote exceeding a two-thirds majority, then the members may amend the bylaws by an affirmative vote of two-thirds of the total authorized votes in the association. If the bylaws do not provide for a method by which the members may call a meeting of the 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 members may request a meeting of the association's membership by executing a document requesting that a special meeting of the membership be held, or if the annual meeting of the membership will 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 will not take place at the annual meeting of the association, the executive board shall schedule the special meeting of the membership to occur within 60 days of the receipt of the request, which special meeting shall be held between the hours of 7:00 p.m. and 8:00 p.m., except that if such day is a Sunday, the meeting shall be held on the next day thereafter;

(c) the language of the <sup>1</sup>proposed<sup>1</sup> amendment shall be <sup>1</sup>[submitted to the association and shall be placed in appropriate form for distribution to the membership, which] 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 <sup>1</sup> amendment shall be mailed, hand-delivered or, if the bylaws permit, electronically delivered, together with the notice of the meeting to the 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 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) if the amendment is approved, the association shall promptly record the same 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 membership in the association after subtracting those owners ineligible to vote because they are not in good standing.

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

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

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.

(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.

(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 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 board members. Unless the bylaws provide **[otherwise]** for the voting interest of each unit to be proportional to the unit's value or size, each unit conveyed to an owner shall be entitled to one vote regardless of the number

of association members, and voting-eligible tenants, 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 [owners] association members, and voting-eligible tenants, 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 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.

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

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

8. This act shall take effect immediately.