

LEGISLATIVE HISTORY CHECKLIST
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(Planned real estate--
administrative procedures)

NJSA: 45:22A-43

LAWS OF: 1993 **CHAPTER:** 30

BILL NO: S217

SPONSOR(S) Bennett

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Local Government
SENATE: Community Affairs

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 12, 1993
SENATE: May 12, 1992

E OF APPROVAL: January 29, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: ~~Yes~~

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clipping--attached:

"Municipal services for condos & co-ops," 1-31-93, New York Times.

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P.L.1993, CHAPTER 30, approved January 29, 1993
1992 Senate No. 217 (First Reprint)

1 **AN ACT** concerning the administration and management of
2 planned real estate developments, amending and supplementing
3 P.L.1977, c.419 (C.45:22A-21 et seq.).
4

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

7 1. (New section) A developer subject to the registration
8 requirements of section 6 of P.L.1977, c.419 (C.45:22A-26) shall
9 organize or cause to be organized an association whose obligation
10 it shall be to manage the common elements and facilities. The
11 association shall be formed on or before the filing of the master
12 deed or declaration of covenants and restrictions, and may be
13 formed as a for-profit or nonprofit corporation, unincorporated
14 association, or any other form permitted by law.

15 2. (New section) a. Subject to the master deed, declaration of
16 covenants and restrictions or other instruments of creation, the
17 association may do all that it is legally entitled to do under the
18 laws applicable to its form of organization.

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

22 c. The association shall provide a fair and efficient procedure
23 for the resolution of disputes between individual unit owners and
24 the association, and between unit owners, which shall be readily
25 available as an alternative to litigation.

26 ¹d. The association may assert tort claims concerning the
27 common elements and facilities of the development as if the
28 claims were asserted directly by the unit owners individually.¹

29 3. (New section) a. The form of administration of an
30 association organized pursuant to section 1 of P.L. , c.
31 (C.) (now pending in the Legislature as this bill) shall
32 provide for the election of an executive board, elected by and
33 responsible to the members of the association pursuant to section
34 4 of P.L. , c. (C.) (now pending in the Legislature as this
35 bill), through which the powers of the association shall be
36 exercised and its functions performed.

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

41 c. The members of the executive board appointed by the

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCO committee amendments adopted March 5, 1992.

1 developer shall be liable as fiduciaries to the owners for their
2 acts or omissions.

3 d. During control of the executive board by the developer,
4 copies of the annual audit of association funds shall be available
5 for inspection by owners or their authorized representative at the
6 project site.

7 4. (New section) The by-laws of the association, which shall
8 initially be recorded with the master deed shall include, in
9 addition to any other lawful provisions, the following:

10 a. A requirement that all meetings of the executive board,
11 except conference or working sessions at which no binding votes
12 are to be taken, shall be open to attendance by all unit owners,
13 and adequate notice of any such meeting shall be given to all unit
14 owners in such manner as the by-laws shall prescribe; except that
15 the executive board may exclude or restrict attendance at those
16 meetings, or portions of meetings, dealing with (1) any matter
17 the disclosure of which would constitute an unwarranted invasion
18 of individual privacy; (2) any pending or anticipated litigation or
19 contract negotiations; (3) any matters falling within the
20 attorney-client privilege, to the extent that confidentiality is
21 required in order for the attorney to exercise his ethical duties as
22 a lawyer, or (4) any matter involving the employment,
23 promotion, discipline or dismissal of a specific officer or
24 employee of the association. At each meeting required under this
25 subsection to be open to all unit owners, the participation of unit
26 owners in the proceedings or the provision of a public comment
27 session shall be at the discretion of the executive board, minutes
28 of the proceedings shall be taken, and copies of those minutes
29 shall be made available to all unit owners before the next open
30 meeting.

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

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

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

48 5. (New section) a. Irrespective of the time set for developer
49 control of the association provided in the master deed,
50 declaration of covenants and restrictions, or other instruments of
51 creation, control of the association shall be surrendered to the
52 owners in the following manner:

53 (1) Sixty days after conveyance of 25 percent of the lots,
54 parcels, units or interests, not fewer than 25 percent of the

1 members of the executive board shall be elected by the owners.
2 (2) Sixty days after conveyance of 50 percent of the lots,
3 parcels, units or interests, not fewer than 40 percent of the
4 members of the executive board shall be elected by the owners.
5 (3) Sixty days after conveyance of 75 percent of the lots,
6 parcels, units or interests, the developer's control of the
7 executive board shall terminate, at which time the owners shall
8 elect the entire executive board; except that the developer may
9 retain the selection of one executive board member so long as
10 there any units remaining unsold in the regular course of business.
11 b. The percentages specified in subsection a. of this section
12 shall be calculated upon the basis of the whole number of units
13 entitled to membership in the association. The bylaws of the
14 association shall specify the number or proportion of votes of all
15 units conveyed to owners that shall be required for the election
16 of board members. Unless the bylaws provide otherwise, each
17 unit conveyed to an owner shall be entitled to one vote. A
18 developer may surrender control of the executive board of the
19 association before the time specified in subsection a. of this
20 section, if the owners agree by a majority vote to assume control.
21 c. Upon assumption by the owners of control of the executive
22 board of the association, the developer shall forthwith deliver to
23 the association all items and documents pertinent to the
24 association, such as, but not limited to, a copy of the master
25 deed, declaration of covenants and restrictions, documents of
26 creation of the association, bylaws, minute book including all
27 minutes, any rules and regulations, association funds and an
28 accounting therefor, all personal property, insurance policies,
29 government permits, a membership roster and all contracts and
30 agreements relative to the association.
31 d. The association when controlled by the owners shall not
32 take any action that would be detrimental to the sale of units by
33 the developer, and shall continue the same level of maintenance,
34 operation and services as immediately prior to their assumption
35 of control, until the last unit is sold.
36 e. From the time of conveyance of 75 percent of the lots,
37 parcels, units, or interests, until the last lot, parcel, unit, or
38 interest in the development is conveyed in the ordinary course of
39 business, the master deed, bylaws or declaration of covenants and
40 restrictions shall not require that more than 75 percent of the
41 votes entitled to be cast thereon be cast in the affirmative for a
42 change in the bylaws or regulations of the association.
43 f. The developer shall not be permitted to cast any votes
44 allocated to unsold lots, parcels, units, or interests, in order to
45 amend the master deed, bylaws, or any other document, for the
46 purpose of changing the permitted use of a lot, parcel, unit, or
47 interest, or for the purpose of reducing the common elements or
48 facilities.
49 6. (New section) The Commissioner of Community Affairs
50 shall cause to be prepared and distributed, for the use and
51 guidance of associations, executive boards and administrators,
52 explanatory materials and guidelines to assist them in achieving
53 proper and timely compliance with the requirements of P.L. .
54 c. (C.) (now pending in the Legislature as this bill). Such

1 guidelines may include the text of model bylaw provisions
2 suggested or recommended for adoption. Failure or refusal of an
3 association or executive board to make proper amendment or
4 supplementation of its bylaws prior to the effective date of
5 P.L. , c. (C.) (now pending in the Legislature as this
6 act) shall not, however, affect their obligation of compliance
7 therewith on and after that effective date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 property existing or to exist by means of any:
- 2 (1) Newspaper or periodical;
- 3 (2) Radio or television broadcast;
- 4 (3) Written or printed or photographic matter;
- 5 (4) Billboards or signs;
- 6 (5) Display of model houses or units;
- 7 (6) Material used in connection with the disposition or offer of
- 8 the development by radio, television, telephone or any other
- 9 electronic means; or
- 10 (7) Material used by developers or their agents to induce
- 11 prospective purchasers to visit the development, particularly
- 12 vacation certificates which require the holders of such
- 13 certificates to attend or submit to a sales presentation by a
- 14 developer or his agents.
- 15 "Advertising" does not mean and shall not be deemed to
- 16 include: Stockholder communications such as annual reports and
- 17 interim financial reports, proxy materials, registration
- 18 statements, securities prospectuses, applications for listing
- 19 securities on stock exchanges, and the like; all communications
- 20 addressed to and relating to the account of any person who has
- 21 previously executed a contract for the purchase of the
- 22 subdivider's lands except when directed to the sale of additional
- 23 lands.
- 24 k. "Nonbinding reservation agreement" means an agreement
- 25 between the developer and a purchaser and which may be
- 26 cancelled without penalty by either party upon written notice at
- 27 any time prior to the formation of a contract for the disposition
- 28 of any lot, parcel, unit or interest in a planned real estate
- 29 development.
- 30 l. "Blanket encumbrance" means a trust deed, mortgage,
- 31 judgment, or any other lien or encumbrance, including an option
- 32 or contract to sell or a trust agreement, affecting a development
- 33 or affecting more than one lot, unit, parcel, or interest therein,
- 34 but does not include any lien or other encumbrance arising as the
- 35 result of the imposition of any tax assessment by any public
- 36 authority.
- 37 m. "Conversion" means any change with respect to a real
- 38 estate development or subdivision, apartment complex or other
- 39 entity concerned with the ownership, use or management of real
- 40 property which would make such entity a planned real estate
- 41 development.
- 42 n. "Association" means an association for the management of
- 43 common elements and facilities, organized pursuant to section 1
- 44 of P.L. , c. (C.) (now pending in the Legislature as this
- 45 bill).
- 46 o. "Executive board" means the executive board of an
- 47 association, as provided for in section 3 of P.L. , c. (C.)
- 48 (now pending in the Legislature as this act).
- 49 p. "Unit" means any lot, parcel, unit or interest in a planned
- 50 real estate development that is, or is intended to be, a separately
- 51 owned area thereof.
- 52 (cf: P.L. 1977, c. 419, s.3)
- 53 8. This act shall take effect six months after enactment,
- 54 except that section 6 shall take effect immediately.

S217 [1R]

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3 **Specifies forms and procedures in administration of planned real**

4 **estate developments.**

14) Billboards or signs

15) Display of model houses or units

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

17) 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 Stockholders 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 subdividers lands except when directed to the sale of additional lands.

"Nonbinding reservation agreement" means an agreement between the developer and a purchaser and which may be cancelled 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.

"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.

"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.

"Association" means an association for the management of common elements and facilities, organized pursuant to section 1 of P.L. , c. (C.) (now pending in the Legislature as this bill).

"Executive board" means the executive board of an association, as provided for in section 3 of P.L. , c. (C.) (now pending in the Legislature as this act).

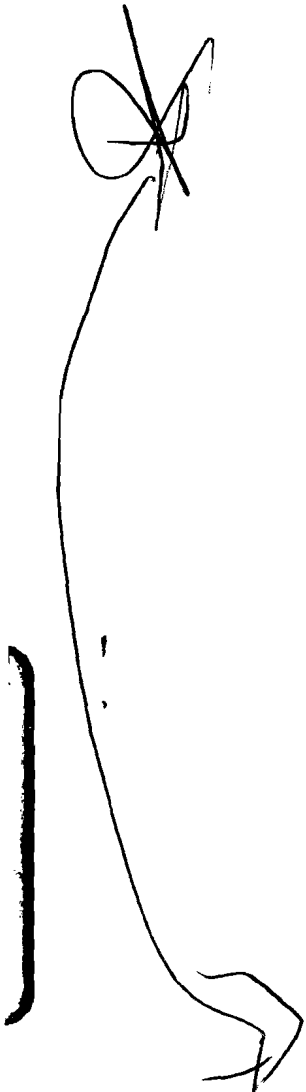
"Unit" means any lot, parcel, unit or interest in a planned real estate development that is, or is intended to be, a separately owned area thereof.

(cf: P.L.1977, c.419, s.3)

B. This act shall take effect six months after enactment, except that section 6 shall take effect immediately.

Sponsor's STATEMENT

This bill provides certain standard administrative forms and



1 procedures for all planned real estate developments (PREs),
2 which include condominiums, cooperatives, and various other
3 "common-interest communities" that combine individual
4 occupancy of lots or units with communal ownership and
5 management of common elements serving those lots or units.
6 These standards are intended to prescribe a consistency of
7 management methods in all types of PREs, and to safeguard the
8 interests of the individual owners or occupants.

9 This bill incorporates into statute law certain provisions
10 already existing in the PRE regulations of the Department of
11 Community Affairs (DCA). It also incorporates into general
12 PRE law certain provisions -- relating to the bylaws of unit
13 owners' associations, the establishment of members' voting
14 rights, the allocation and collection of common expenses, the
15 amendment of association bylaws and the adoption, amendment
16 and enforcement of rules concerning the common elements --
17 that are now found only in the statute on condominiums. The bill
18 also introduces a requirement that meetings of an association's
19 executive board be open to all members of the association, with
20 certain specified exceptions.

21 The bill also requires DCA to prepare informative materials,
22 including suggested "model" bylaw provisions, to assist existing
23 associations in bringing their practices into conformity with the
24 provisions of this bill.

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29 Specifies forms and procedures in administration of planned real
30 estate developments.

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 217

STATE OF NEW JERSEY

DATED: NOVEMBER 23, 1992

The Assembly Local Government Committee favorably reports Senate Bill No. 217 (1R).

Senate Bill No. 217 (1R) addresses the transition of control over the common elements and facilities in planned real estate developments (PREDS) from a developer to an association composed of unit owners. PREDS include condominiums, cooperatives, and various other "common-interest communities" that combine individual occupancy of lots or units with communal ownership and management of common elements serving those lots or units. The procedures and standards set forth in the bill are intended to prescribe a consistency of management methods in all types of PREDS, and to safeguard the interests of the individual owners or occupants.

The bill incorporates into statutory law certain provisions already existing in the PRED regulations of the Department of Community Affairs (DCA). The bill adopts the DCA regulations which require a developer to organize an association to manage the common elements and facilities of the development and which establish a timetable for the transfer of control of the association from a developer to unit owners.

The bill also incorporates into general PRED law certain provisions -- relating to the bylaws of unit owners' associations, the establishment of members' voting rights, the allocation and collection of common expenses, the amendment of association bylaws and the adoption, amendment and enforcement of rules concerning the common elements -- that are now found only in the statute on condominiums. The bill authorizes associations to assert tort claims concerning the common elements and facilities of the development as if the claims were asserted directly by the unit owners individually.

The bill introduces the requirement that meetings of an association's executive board be open to all members of the association, with certain specified exceptions. The bill also requires the association to provide a procedure for the resolution of disputes between unit owners and between unit owners and the association as an alternative to litigation. The bill also requires DCA to prepare and distribute informative materials and guidelines, including "model" bylaw provisions, to assist associations, executive boards and administrators in complying with the requirements of this bill.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 217

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MARCH 5, 1992

The Senate Community Affairs Committee reports favorably Senate Bill No. 217 with committee amendments.

Senate Bill No. 217, as amended by the committee, addresses the transition of control over the common elements and facilities in planned real estate developments (PREDS) from a developer to an association composed of unit owners. PREDS include condominiums, cooperatives, and various other "common-interest communities" that combine individual occupancy of lots or units with communal ownership and management of common elements serving those lots or units. The procedures and standards set forth in the bill are intended to prescribe a consistency of management methods in all types of PREDS, and to safeguard the interests of the individual owners or occupants.

The bill incorporates into statutory law certain provisions already existing in the PRED regulations of the Department of Community Affairs (DCA). The bill adopts the DCA regulations which require a developer to organize an association to manage the common elements and facilities of the development and which establish a timetable for the transfer of control of the association from a developer to unit owners.

The bill also incorporates into general PRED law certain provisions -- relating to the bylaws of unit owners' associations, the establishment of members' voting rights, the allocation and collection of common expenses, the amendment of association bylaws and the adoption, amendment and enforcement of rules concerning the common elements -- that are now found only in the statute on condominiums. The bill authorizes associations to assert tort claims concerning the common elements and facilities of the development as if the claims were asserted directly by the unit owners individually.

The bill introduces the requirement that meetings of an association's executive board be open to all members of the association, with certain specified exceptions. The bill also requires the association to provide a procedure for the resolution of disputes between unit owners and between unit owners and the association as an alternative to litigation. The bill also requires DCA to prepare and distribute informative materials and guidelines, including "model" bylaw provisions, to assist associations, executive boards and administrators in complying with the requirements of this bill.

The bill was amended by the committee to authorize PRED associations to assert tort claims concerning the common elements and facilities of the development as if the claims were asserted directly by the unit owners individually.

This bill was pre-filed for introduction in the 1992 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

LEGISLATIVE FISCAL ESTIMATE TO

[FIRST REPRINT]

SENATE, No. 217

STATE OF NEW JERSEY

DATED: July 2, 1992

Senate Bill No. 217 [1R], addresses the transition of control over the common elements and facilities in planned real estate developments (PREDS) from a developer to an association composed of unit owners. PREDS include condominiums, cooperatives, and various other "common-interest communities" that combine individual occupancy of lots or units with communal ownership and management of common elements serving those lots or units. The procedures and standards set forth in the bill are intended to prescribe a consistency of management methods in all types of PREDS, and to safeguard the interests of the individual owners or occupants.

The bill incorporates into statutory law certain provisions already existing in the PRED regulations of the Department of Community Affairs (DCA). The bill adopts the DCA regulations which require a developer to organize an association to manage the common elements and facilities of the development and which establish a timetable for the transfer of control of the association from a developer to unit owners.

The bill also incorporates into general PRED law certain provisions -- relating to the bylaws of unit owners' associations, the establishment of members' voting rights, the allocation and collection of common expenses, the amendment of association bylaws and the adoption, amendment and enforcement of rules concerning the common elements -- that are now found only in the statute on condominiums. The bill authorizes associations to assert tort claims concerning the common elements and facilities of the development as if the claims were asserted directly by the unit owners individually.

The bill introduces the requirement that meetings of an association's executive board be open to all members of the association, with certain specified exceptions. The bill also requires the association to provide a procedure for the resolution of disputes between unit owners and between unit owners and the association as an alternative to litigation.

The bill also requires DCA to prepare and distribute informative materials and guidelines, including "model" bylaw provisions, to assist associations, executive boards and administrators in complying with the requirements of this bill.

DCA states that this bill would require updating of its current informative materials and guidelines issued under existing DCA regulations, including "model" bylaw provisions, to assist associations, and executive boards to comply with the law. DCA indicates that it can absorb the additional responsibilities imposed under this bill with its current personnel and printing resources, and therefore no additional State cost would be incurred.

S217 [1R]

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The Office of Legislative Services (OLS) concurs.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.