

2A:62A-12 to 2A:62A-14
LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:62A-12 to 2A:62A-14

(Common interest Communities--
bylaws may contain certain
immunities to association)

LAWS OF: 1989

CHAPTER: 9

BILL NO: A2443

SPONSOR(S): Singer and Hendrickson

Date Introduced: February 18, 1988

Committee: Assembly: Insurance

Senate: Judiciary

Amended during passage: No

Date of Passage: Assembly: June 2, 1988

Senate: December 19, 1988

Date of Approval: January 30, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

See S251 and veto-- attached:

See newspaper clipping-- attached:

"Kean signs bill aiding homeowners groups," 1-31-89 Asbury Park press.

rdv

ASSEMBLY, No. 2443

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 18, 1988

By Assemblymen SINGER and HENDRICKSON

1 AN ACT concerning common interest communities.

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

5 1. As used in this act:

6 a. "Association" means the entity responsible for the
7 administration of a common interest community in which 75% or
8 more units have been conveyed to unit owners other than the
9 developer pursuant to subsection a. of section 2 P.L. 1979, c. 157
(C. 46:8B-12.1), which association may be incorporated or
11 unincorporated.

12 b. "Bylaws" mean the governing regulations adopted by a
13 common interest community for the administration and
14 management of the property.

15 c. "Common interest community" means real estate with
16 respect to which a person, by virtue of his ownership of a unit, is
17 obligated to pay for real estate taxes, insurance premiums,
18 maintenance or improvement of other real estate described in the
19 declaration. Ownership of a unit does not include holding a
20 leasehold interest of less than 20 years in a unit, including
21 renewal options. Common interest communities shall include, but
22 not be limited to, condominiums and cooperatives.

23 d. "Declaration" means any instrument, however denominated,
24 which creates a common interest community, including any
25 amendment to that instrument.

26 e. "Bodily injury" means death or bodily injury to a person.

27 f. "Qualified common interest community" means a common
28 interest community which is (1) residential and (2) contains at
29 least four units.

30 g. "Unit" means a physical part of a common interest
31 community designated for separate ownership or occupancy.

32 h. "Unit owner" means the person owning a unit or that
33 person's spouse.

1 2. a. Where the bylaws of a qualified common interest
3 community specifically so provide, the association shall not be
4 liable in any civil action brought by or on behalf of a unit owner
5 to respond in damages as a result of bodily injury to the unit
6 owner occurring on the premises of the qualified common interest
7 community.

8 b. Nothing in this act shall be deemed to grant immunity to
9 any association causing bodily injury to the unit owner on the
10 premises of the qualified common interest community by its
11 willful, wanton or grossly negligent act of commission or omission.

12 3. a. No bylaws shall be amended in accordance with section 2
13 of this act unless the amendment is approved by the owners of at
14 least 2/3 of the units held by unit owners other than the
15 developer in the qualified common interest community.

16 b. Bylaws adopted in accordance with section 2 of this act
17 shall apply to actions for injuries sustained on or after the
18 operative date of the bylaws.

19 4. This act shall take effect immediately.

20

Sponsors STATEMENT

21

22 This bill would permit associations which are responsible for
23 the administration of a common interest community to adopt
24 bylaws which would eliminate the liability of the association,
25 except in cases in which it is willfully, wantonly, or grossly
26 negligent, with respect to any bodily injury to a unit owner or the
27 owner's spouse which occurs on the premises of the common
28 interest community.

29 This bill clarifies the fact that no common interest community
30 could establish such a provision in its bylaws unless at least 75%
31 of the units are owned by unit owners other than the developer.
32 This would preclude the exemption from liability from attaching
33 to the developer while the major portion of the community was
34 still under construction.

35

CIVIL JUSTICE

36

Tort Liability

37
38
39 Permits common interest communities to provide certain
40 immunities to association in bylaws.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2443

STATE OF NEW JERSEY

DATED: APRIL 18, 1988

This bill provides that qualified common interest communities, such as condominium communities, may amend the bylaws of the community to provide that the owners' association is not liable in any civil action which is brought either by or on behalf of a unit owner or his spouse for bodily injuries sustained by the unit owner or his spouse. The act does not bar suits against associations in cases in which the unit owner or his spouse is injured on the common premises if the association is adjudged to be willfully, wantonly, or grossly negligent.

The bill would prohibit the bylaws of the owners' association from being amended to limit liability in this manner unless the amendment is approved by the owners of at least two thirds of the units which are held by individual unit owners.

This bill, in a slightly different form, was introduced in the Senate last year as Senate Bill 251. It passed both houses of the Legislature but was pocket vetoed by the Governor. As Senate Bill 251 was originally drawn, it left open the possibility that if such immunity from liability were conferred upon a condominium community in its early stages of construction this would result in the de facto conferring of immunity upon the developer of the project who, under the provisions of P.L. 1979, c. 157 (C. 46:8B-12 et seq.), participates in the governance of the association until the time that 75% of the units are conveyed to individuals. The Governor in his veto message expressed the concern that during this period of time that the developer controls the association he "may hold ownership of two-thirds of the units and, thus, might be granted the authority both to create and ratify the immunity contemplated by this bill."

The Governor noted that as a policy matter he did not believe that an association which is controlled by the project developer should be empowered to create an immunity which would be binding on future unit owners. The present version of the bill addresses the Governor's concern by providing that the bylaws of an association cannot be amended until such time as 75% of the units have been conveyed to individual owners.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2443

STATE OF NEW JERSEY

DATED: DECEMBER 1, 1988

The Senate Judiciary Committee reports favorably Assembly Bill No. 2443.

This bill provides that qualified common interest communities, such as condominium communities, may amend the bylaws of the community to provide that the owners' association is not liable in any civil action which is brought either by or on behalf of a unit owner or his spouse for bodily injuries sustained by the unit owner or his spouse. The act does not bar suits against associations in cases in which the unit owner or his spouse is injured on the common premises if the association is adjudged to be willfully, wantonly, or grossly negligent.

The bill would prohibit the bylaws of the owners' association from being amended to limit liability in this manner unless the amendment is approved by the owners of at least two thirds of the units which are held by individual unit owners.

This bill, in a slightly different form, was introduced in the Senate last year as Senate Bill 251. It passed both houses of the legislature but was pocket vetoed by the Governor. As Senate Bill 251 was originally drawn, it left open the possibility that if such immunity from liability were conferred upon a condominium community in its early stages of construction this would result in the de facto conferring of immunity upon the developer of the project who, under the provisions of P.L.1979, c.157 (C.46:8B-12.1 et seq.), participates in the governance of the association until the time that 75% of the units are conveyed to individuals. The Governor in his veto message expressed the concern that during this period of time that the developer controls the association he "may hold ownership of two-thirds of the units and, thus, might be granted the authority both to create and ratify the immunity contemplated by this bill."

The Governor noted that as a policy matter he did not believe that an association which is controlled by the project developer should be empowered to create an immunity which would be binding on future unit owners. The present version of the bill addresses the Governor's concern by providing that the bylaws of an association cannot be amended until such time as 75% of the units have been conveyed to individual owners.

LAW LIBRARY COPY
DO NOT REMOVE

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 251

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator CONNORS

AN ACT concerning common interest communities.

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

1 1. As used in this act:

2 a. "Association" means the entity responsible for the adminis-
3 tration of a common interest community, which entity may be
4 incorporated or unincorporated.

5 b. "Bylaws" mean the governing regulations adopted by a
6 common interest community for the administration and manage-
7 ment of the property.

8 c. "Common interest community" means real estate with re-
9 spect to which a person, by virtue of his ownership of a unit, is
10 obligated to pay for real estate taxes, insurance premiums, main-
11 tenance or improvement of other real estate described in the
12 declaration. Ownership of a unit does not include holding a lease-
13 hold interest of less than 20 years in a unit, including renewal
14 options. Common interest communities shall include, but not be
15 limited to, condominiums and cooperatives.

16 d. "Declaration" means any instrument, however denominated,
17 which creates a common interest community, including any amend-
18 ment to that instrument.

19 e. *["Injury"]* ***** *Bodily injury* ***** means death*[,] *
20 *or bodily* injury to a person*[, damage to or loss of property or
20A any other injury that a person may suffer]*.

21 f. "Qualified common interest community" means a common in-
22 terest community which is (1) residential and (2) contains at
23 least four units.

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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted October 27, 1986.

**—Senate amendments adopted June 8, 1987.

24 g. "Unit" means a physical part of a common interest com-
25 munity designated for separate ownership or occupancy.

26 h. "Unit owner" means the person owning a unit or that per-
27 son's spouse.

1 2. ***a.*** Where the bylaws of a qualified common interest com-
2 munity specifically so provide, the association shall not be liable
3 in any civil action brought by or on behalf of a unit owner to re-
4 spond in damages as a result of **[any]* *bodily** injury to the
5 unit owner occurring on the premises of the qualified common in-
6 terest community.

7 ***b.* *Nothing in this act shall be deemed to grant immunity to*
8 *any association causing bodily injury to the unit owner on the*
9 *premises of the qualified common interest community by its will-*
10 *ful, wanton or grossly negligent act of commission or omission.***

1 3. ***a.* *No bylaws shall be amended in accordance with section*
2 *2 of this act unless the amendment is approved by the owners of*
3 *at least 2/3 of the units in the qualified common interest com-*
4 *munity.***

5 ***b.*** Bylaws adopted in accordance with section 2 of this act
6 shall apply to actions for injuries sustained on or after the oper-
7 ative date of the bylaws.

1 4. This act shall take effect immediately.

PROPERTY

Permits common interest communities to provide in bylaws that
association is immune from bodily injuries sustained by unit owner.

LAW LIBRARY COPY
DO NOT REMOVE

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

SENATE, No. 251

[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: SEPTEMBER 1, 1987

This bill would permit the bylaws of homeowners' associations of common interest communities (such as condominiums and cooperatives) to provide immunity to the association with respect to any civil action which might be brought by or on behalf of a unit owner who sustains bodily injury on the premises of the common interest community. The immunity granted by the bylaws of the association would not extend to willful, wanton or grossly negligent acts of commission or omission. If the association bylaws are to be amended to provide the immunity, the amendment must be approved by at least $\frac{2}{3}$ of the unit owners. The immunity would extend only to bodily injury sustained by the unit owner or the unit owner's spouse.

This bill would permit condominium and cooperative homeowners' associations to protect themselves against suits by unit owners. Some associations have had lawsuits filed against them by unit owners who have fallen on icy sidewalks or sustained other injuries on the common property; as a result, some associations have had trouble getting insurance coverage or have had their premiums rise significantly. This bill would permit the members of the association to agree to eliminate this type of suit.

LAW LIBRARY COPY
DO NOT REMOVE

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 251

with Senate committee amendments

without recommendation

STATE OF NEW JERSEY

DATED: OCTOBER 27, 1986

This bill was released without recommendation by the committee.

This bill, as amended by the committee, would permit residential common interest communities containing at least four units to provide in their bylaws that the association maintaining the community will not be liable in damages for bodily injuries sustained by unit owners on the community's premises. The limitation on liability goes to death or bodily injury sustained by a unit owner in an action brought by or on behalf of the owner. "Unit owner" includes the unit owner and that person's spouse.

SENATE, No. 251

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator CONNORS

AN ACT concerning common interest communities.

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

1 1. As used in this act:

2 a. "Association" means the entity responsible for the adminis-
3 tration of a common interest community, which entity may be
4 incorporated or unincorporated.

5 b. "Bylaws" mean the governing regulations adopted by a
6 common interest community for the administration and manage-
7 ment of the property.

8 c. "Common interest community" means real estate with re-
9 spect to which a person, by virtue of his ownership of a unit, is
10 obligated to pay for real estate taxes, insurance premiums, main-
11 tenance or improvement of other real estate described in the
12 declaration. Ownership of a unit does not include holding a lease-
13 hold interest of less than 20 years in a unit, including renewal
14 options. Common interest communities shall include, but not be
15 limited to, condominiums and cooperatives.

16 d. "Declaration" means any instrument, however denominated,
17 which creates a common interest community, including any amend-
18 ment to that instrument.

19 e. "Injury" means death, injury to a person, damage to or
20 loss of property or any other injury that a person may suffer.

21 f. "Qualified common interest community" means a common in-
22 terest community which is (1) residential and (2) contains at
23 least four units.

24 g. "Unit" means a physical part of a common interest com-
25 munity designated for separate ownership or occupancy.

26 h. "Unit owner" means the person owning a unit or that per-
27 son's spouse.

1 2. Where the bylaws of a qualified common interest community
2 specifically so provide, the association shall not be liable in any
3 civil action brought by or on behalf of a unit owner to respond
4 in damages as a result of any injury to the unit owner occurring
5 on the premises of the qualified common interest community.

1 3. Bylaws adopted in accordance with section 2 of this act shall
2 apply to actions for injuries sustained on or after the operative
3 date of the bylaws.

1 4. This act shall take effect immediately.

STATEMENT

This bill authorizes common interest communities, such as con-
dominiums and cooperatives, to provide in their bylaws that the
association which maintains the community will not be liable in
damages for injuries sustained by unit owners on the premises.
Bylaws adopted in accordance with the bill would preclude actions
for injuries sustained on or after the operative date of the bylaws.
