C-IHC COMMON-INTEREST HOMEOWNERS COALITION

Assert Your Homeowner Rights!

CIC HOMEOWNERS HAVE RIGHTS GUARANTEED BY LAW. YOU CAN CLAIM YOURS THROUGH BETTER BOARD TRAINING, ADR, SUPPORT OF KEY LEGISLATION AND MORE. LOOK INSIDE FOR SOME GUIDANCE

OP ED

HOW CAN WE SOLVE CIC PROBLEMS?

Owner protections for common-interest communities have moved extremely slowly over decades, but there are potential solutions out there, if only we can get the executive branch and the legislature to act on them.

Read this op-ed on page 6.

OWNER'S CORNER

"THOU SHALL NOT"

This planned community learned the hard way that board members often need training, and that they must not delegate important decisions to the community's management. Otherwise, poor decisions, high expenditures and downright abuse can follow.

Read the story on page 8.

FEATURE STORY

ALTERNATE DISPUTE RESOLUTION – PART 1

C-IHC President Ed Hannaman provides Part 1 of an essential primer on alternative dispute resolution (ADR) – the good, the bad and the ugly. ADR can be a valuable tool for solving disputes with the board, but it's not a panacea.

Read all about it on page 3.

ALSO INSIDE

President's Message

The many thousands of complaints I've heard over the years attest to the fact that there are many things wrong in our state's common-interest residential communities. A start to understanding *why* requires a little bit of historical background.

The Planned Real Estate Development Full Disclosure Act (PRED) was adopted in 1977. As the name shows, the concern was to protect buyers from unscrupulous developers. The regulations implementing its provisions were effective in late 1978. The regulations were amended in late 1983 to add some basic requirements for open meetings, but mainly required specific staged turnover control to owners from the developer.

In 1993 the legislature amended PRED to add a requirement for the developer to organize an association to manage common elements and facilities. The law also required associations to provide alternate dispute resolution (ADR) and that members elect an executive board to exercise association powers. It also stated that bylaws must provide for boards to take binding votes at open meetings, provide adequate notice of such meetings as bylaws provided. Bylaws were also to provide for how they could be amended.

In 1996, the legislature amended the Condominium Act (which had been law since January 1970) to require the maintenance of accounting records and allow owner access to them. It also mandated some specifics to expand the 1996 "fair and efficient" ADR standard. Unfortunately, it retained board control of the ADR procedure. (See article on ADR in this issue for more information.) The legislature added some basic election standards to PRED effective in November 2017, with regulations implementing them adopted in 2020.

Both the timeline and the provisions demonstrate the legislative flaws in providing adequate protections for owners. Human nature and those "serving" the association easily exploited this defect. Despite providing ample protections for purchasers, and a PRED staff to administer them, no thought whatsoever was given to the situation owners inevitably faced when the developer left. Even legislating turnover to the owners took 16 years! Serious operational problems occur after the developer turns the project over to owners, yet even the most basic owner rights were an afterthought, and inadequate at that.

Over the years the legislature continued to graft owner rights, totally unrelated to developers, onto a PRED law that was unsuitable for that purpose. Owners deserve an independent law enumerating their rights and providing effective protection. The need to protect owners after the developer's departure is far more important and is essentially forever. Moreover, the Public Offering Statement (unwieldly and seldom read except by PRED staff) which prospective purchasers receive, contains nothing about owners' rights or that the State can offer certain support. To further exacerbate the problems for owners, the legislature made them subject to developer drafted governing documents and rules imposed to facilitate sales.

Any objective person who gave the matter thought would have seen that owners should live under the system and rules they impose on themselves, not those dictated by the developer (or the developer's lawyers). Although owners have the right to change bylaws, that is more theoretical than real as it is extremely difficult and requires great organizational effort. How much more sense would it make at turnover (or a certain point thereafter), to list all the restrictions or governing clauses (especially those giving power to the board) and allow the owners to vote on them.

–*Ed Hannaman* President, C-IHC

All About Alternative Dispute Resolution (ADR) – Part 1

by Ed Hannaman, President, C-IHC

This ongoing article covers some basics about alternative dispute resolution (ADR). In this first installment, we will cover the basic rights to ADR.

Both the Planned Real Estate Development (PRED) Act and the Condominium Act require all common-interest residential associations to have a written Alternative Dispute Resolution (ADR) procedure and to offer it to owners upon request. The purpose of ADR is to provide a way for owners and management to meet and potentially resolve problems before resorting to litigation. It's important to note that an ADR decision is not legally binding unless both parties agree and act accordingly.

The Condominium Act provides a few additional requirements to the PRED's initial "fair and efficient" standard for ADR; namely that it applies to "housing-related" disputes, and cannot be provided by a governing board member or another unit owner involved in the dispute. This guidance is intended to avoid a dispute resolver or mediator who may have a conflict, so it also bars any association hires or employees from acting in that role.

The term "housing-related" is broadly interpreted, which basically means it only excludes purely personal problems, criminal actions and legitimate discretionary board actions. People upset with board policies or discretionary actions have a remedy through the ballot box.

ADR Procedure

As noted in the President's column, it is the association board that determines what the ADR procedure will be. Obviously this is problematic but, until this is remedied you must make the best of it. If it doesn't solve your concern, consider it a learning experience and a potential basis for election issues.

ADR can be either mediation or non-binding arbitration. In mediation, the mediator attempts to resolve the problem to the mutual satisfaction of the parties. In the non-binding arbitration ADR, there is a decision, but it has no legal force on the parties. Be aware that in any subsequent court proceeding, the ADR proceedings are generally inadmissible. A court will consider the matter "de novo" meaning anew.

In either case, this basic ADR is a "common expense," so you cannot be charged individually for it, as opposed to paying a proportionate share as an owner. Because the board chooses the ADR provider (arbitrator), you would expect it to abide by any arbitration decision unless it chooses to appeal to court.

Notably, there are no regulations governing ADR. It is permissible for an ADR procedure to authorize an additional step (such as binding arbitration), *but that is purely voluntary on the owner's part, and the association can impose a charge for it.* The State has an obligation to ensure associations provide a "fair and efficient" ADR. If you feel that the ADR implementation or that the language of the procedure is not "fair and efficient" you can submit a complaint to the Association Section in the Bureau of Homeowner Protection in the Department of Community Affairs.

As an owner, you can choose to have legal representation at the ADR or just bring someone for support or to assist, but who does not actually present your case or speak for you, except as an interpreter. It is a good idea for you to have such a person with you because you can be fairly sure the board will have several representatives there, often including the association attorney, property manager or other employee! However, a board

Continued on next page.

All About ADR (continued)

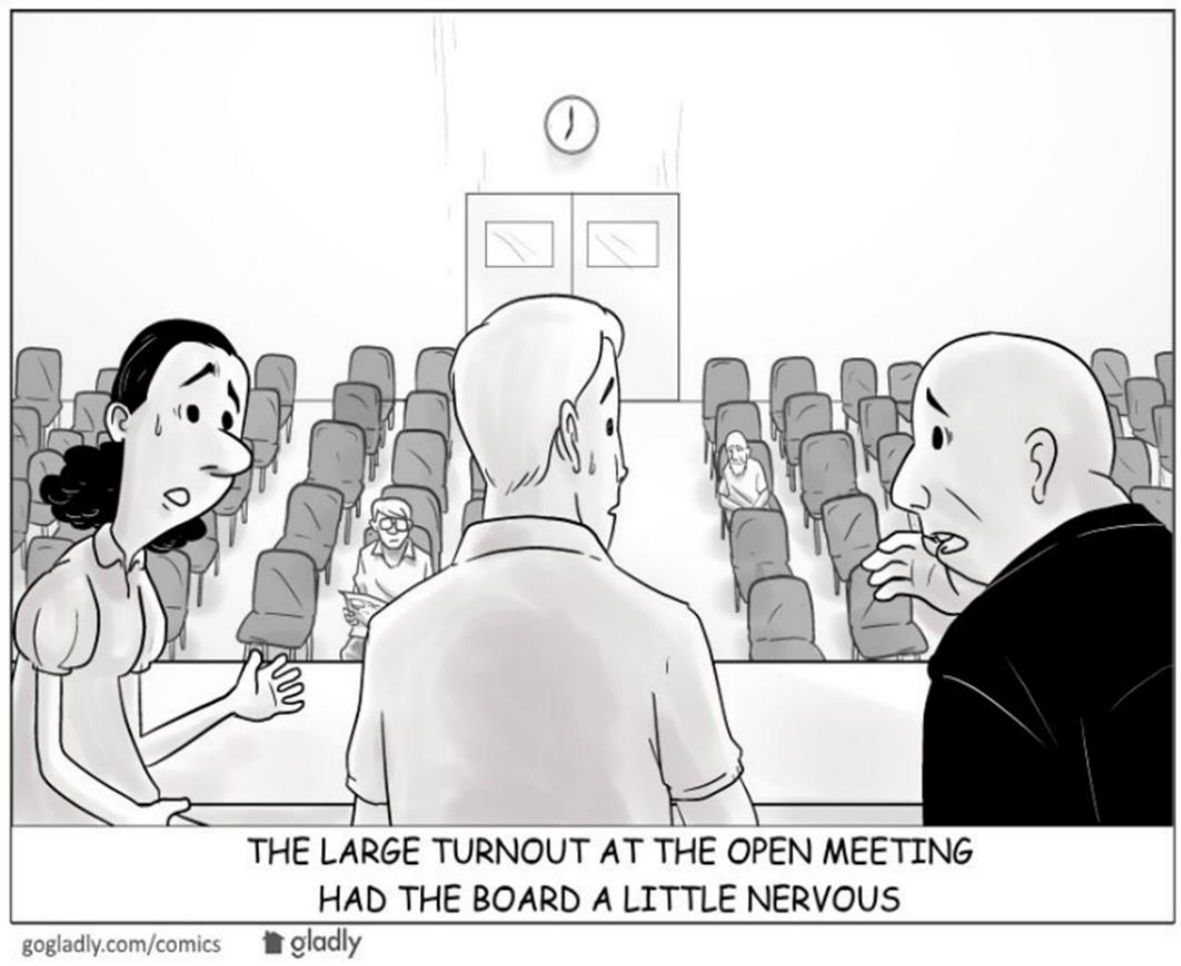
cannot send an agent such as the property manager or board attorney in their stead. *At least one board member with authority to make any necessary "on the spot" decisions must attend.*

Even though there are no strict rules of evidence, you should be familiar with any pertinent governing document provisions, and bring any supporting documents, photos or other items to be used as evidence. You also should request that any witnesses not be in the room when others testify about the same issue so that they cannot be guided or influenced, especially by a supervisor.

If someone is necessary as a witness but cannot attend for a very good reason (and you can first try for adjournments to enable them to do so), you should bring their affidavit as strict hearsay rules should not apply in an informal ADR procedure.

Unless there are complex issues of law involved, you do not need to be an attorney to handle your own ADR, but you do need to be objective and well-prepared; not only with your presentation but also by anticipating that of your opponent (usually the association board.)

Good luck with your ADR, and contact us here at C-IHC if you have any questions. Look for more on ADR in our next newsletter!



How Can We Solve HOA Problems?

by Margaret Bar-Akiva, C-IHC Founding Member and Board Member

Editor's Note: The original version of this article appeared in the Asbury Park Press *in 2005. As noted in this newsletter's President's Message, owner protections have moved extremely slowly over decades. We offer this not to depress everyone, but to demonstrate that there are solutions, if only we can get the executive branch and the legislature to act on them.*

More than one million New Jersey residents, many of them senior citizens, live in condominiums, planned unit developments, townhomes and cooperatives, collectively known as homeowner associations (HOA's). But unlike other New Jersey homeowners, those residents often discover that living in HOAs governed by their boards means having to relinquish some of their basic constitutional and property rights.

Even though there are statutory requirements that call for fair elections, open meetings with binding votes, and access to financial records, many HOA boards often pay lip service to these laws. On a daily basis, HOA residents are subjected to boards that hold closed-door meetings, conduct improper elections, deny access to financial records, impose unreasonable fines and initiate frivolous lawsuits, all at the homeowners' expense.

When homeowners exercise their fundamental right to ask probing questions they are often stonewalled, vilified or harassed by their boards. All these undemocratic practices have been documented on numerous occasions by the New Jersey Department of Community Affairs (DCA). A legislative task force that held hearings on this matter several years ago put forth 32 recommendations for New Jersey legislators to act upon. Very few of the recommendations have been adopted. A bill put forth by Senator Shirley Turner in 2005 went nowhere.

Many people are at a loss to explain how HOA boards which have been granted government-like powers to impose fines, levy assessments and place liens on residents' homes, have been allowed to do so without any of the governmental oversight requirements that such powers demand. And it is equally bewildering that a country bold enough to export democracy abroad can tolerate this form of anarchy at home.

There is no doubt that today's widespread dissatisfaction with HOA's stems from laws of the 1960's that classified them as private business corporations instead of quasi-governmental entities. The dire outcome of this form of housing might not have been anticipated at the outset but we have now acquired sufficient experience by which we can make at least the following observations:

(1) Applying the corporate business model and the business judgment rule to HOA's has proven to be deeply flawed because it has unwisely exempted them from State scrutiny.
(2) The lack of governmental oversight has allowed HOA's to turn into breeding grounds for special interest groups and has permitted unscrupulous board members to act with impunity.
(3) The wide latitude given to HOA boards mandates that they no longer be allowed to masquerade as private corporations but be treated just like any other government-regulated business.

These problems are not unique to New Jersey. The history of HOAs across this nation paints a disturbing picture of government officials who have abdicated their responsibility in protecting association residents from a housing experiment gone awry.

Continued on next page.

Solving HOA Problems (continued)

The time has come for New Jersey homeowners to demand meaningful action from their legislators by enacting comprehensive laws that recognize the governmental nature of these associations, providing boards with clear and uniform guidelines to follow, and requiring them to operate in an open and democratic manner.

Only then can the serious governance problems plaguing HOA's be transformed.

Editor's note: Except for the recent election law passed in response to complaints in Radburn, the situation remains essentially the same. Blame is shared equally between DCA and the legislature for failing to act on behalf of owners as the task force recommended. Of the 32 recommendations in the task force's report, just open meetings and financial access have been acted upon. As expected, the one and only recommendation (No.30) that suggested greater powers for boards to punish homeowners has been adopted wholesale by virtually every association – no need for any legislative action there. Without additional legislative protections, much better enforcement and a paradigm shift in how the law views associations, this op-ed can be published again in another 18 years. C-IHC is determined to do what it can to ensure that doesn't occur. But C-IHC cannot do it alone. Owners must continue or begin demanding action from their legislators to effectuate needed changes. The task force report is available from the C-IHC website at www.c-ihc.org/history.

New Jersey Legislature: Legislation to Watch 2023

Compiled by Joyce Murray, C-IHC Treasurer

Legend: A = Bill in the Assembly S = Bill in the Senate
Y = C-IHC supports; **Q** = C-IHC supports with amendments; **O** = C-IHC opposes

A607 **Y** Sponsor: Kean, Sean
Prohibits conflict of interests by governing board members or management employees of homeowners' associations. Last Session Bill Number: A350

A729 **Y** Sponsors: Rumph, Brian/Gove, Diane
S177 Connors, Christopher/ Hozaphel, James
Makes permanent certain immunity relating to COVID-19 spread in planned real estate developments.

A1102 **Q** Sponsors Chaparro, Annette Mukherji, Raj McKnight, Angela V.
Revises time period at which unit owners assume control of homeowners' associations.
Last Session Bill Number: A1213

A1126 **Y** Sponsor DePhillips, Christopher P.
Requires personnel at gated communities and multi-unit complexes to allow service of process.
Last Session Bill Number: A106

A1601 **Y** Sponsors McGuckin, Gregory P./Catalano, John
S1813 **Y** Hozaphel, James
Requires installation of emergency power supply systems to certain common areas of new planned real estate developments; provides related tax incentives.

A1659 **Y** Sponsors Catalano, John McGuckin, Gregory P. Rumpf, Brian E.
S911 Sponsor: Hozaphel, James
Establishes immunity for senior planned real estate development associations relating to COVID-19.

A1698 Q Sponsor: Quijano, Annette
Requires training of planned real estate development association board members.

A1699 **Q** Sponsor: Quijano, Annette
Requires licensure of community management entity that contracts to conduct management services for planned real estate development association.
Continued on next page.

Legislation (continued)

A2129 **Q** Sponsor Munoz, Nancy F.
Requires certain common interest community associations to publish certain information; requires that homeowners' association contracts for management and maintenance include 24-hour emergency services. Last Session Bill Number: A2528

A2778 **Y** Sponsor Freiman, Roy
Prohibits enforcement, for a period of 12 months, of homeowners' association bylaws prohibiting domesticated animals if owner is FEMA designated displaced individual following emergency declaration by President or Governor. Last Session Bill Number: A1695

A3404 **Y** Sponsor: Peterson, Erik
Clarifies DCA's authority to ensure planned real estate development builders comply with disclosure requirements.

A3412 **Y** Peterson, Erik
Requires developer under "The Planned Real Estate Full Disclosure Act" to post bond with DCA and provides for more accountability to owners in common interest community.

A3959 **Y** Quijano, Annette Jimenez, Angelica M.Jaffer, Sadaf F.
S2935 **Y** Sponsor: Greenstein, Linda R.
Requires certain local authorities to inspect, maintain, and repair fire hydrants in planned real estate developments.

A4946 **Q** Sponsor: Quijano, Annette
S414 Sponsor: Johnson, Gordon
Establishes penalty on Planned real estate development association for failure to provide association members timely access to certain meeting minutes.

A5239 **Q** Sponsor: Danielsen, Joe
Provides standards for election and recall of officers for associations of planned real estate developments and restricts certain expenditures.

S1096 **Y** Sponsor: Vitale, Joseph F.
Provides that cooperative sober living residences are inherently beneficial uses.
Last Session Bill Number: S1117

S1387 **Y** Sponsor: Turner, Shirley
The "Owners' Rights and Obligations in Shared Ownership Communities Act."
Last Session Bill Number: S1751

S1545 **Y** Sponsor: Greenstein, Linda
Prohibits condominium associations from assessing insurance deductibles to individual unit owners or groups of unit owners.
Last Session Bill Number: A2445 S3769

A5239 **Q** Sponsor: Danielsen, Joe
Provides standards for election and recall of officers for associations of planned real estate developments and restricts certain expenditures.

OWNER'S CORNER

Thou Shall Not

By Margaret Tenerovich

"Thou Shall NOT…" These are the three words eagerly adopted by my association's board in Cherry Hill, where homeowners are constantly scolded and fined for everything under the sun. To me, this reflects not simply "unfairness," but lack of competence on our board. Over the years our board has struggled to properly manage the community and its budget, and they have been cavalier about free and fair elections.

Our community isn't alone. Many boards are untrained, ill-advised and negligent in following the law. All of this points to a dire need for CIC board training. The Radburn Act guaranteed fair elections for all homeowners when it passed in 2017. It was great news for common-interest associations, but its guidelines

Owners Corner, continued.

often are not followed. Examples of this in my association included failure to include candidates on the ballot, the property manager alone handling the counting of ballots, and the holdover of a non-elected board because an election was not conducted properly. For example, our elections of 2020 and 2022 were poorly run, and our board just skipped a planned election this year!

There have been other management problems as well. Our association retained service contracts with a succession of third-party managers that apparently weren't vetted properly, with substandard oversight by our board. The results were not good: The first new hire contract ended for cause one year later! A second vendor was employed but quit after just four months.

Lesson Learned

CIC rules and management decisions *must be handled by owners who are board members*, but the pressures of managing an association by volunteer owners often leads to the improper delegation of oversight and management – again, a result of little to no board training. Our recent manager didn't have the right guidance and was free to make what should have been board decisions in hiring other vendors such as lawyers, landscapers, etc. The result: fees skyrocketed, and the management became the entity calling the shots, rather than the owners.

Association boards should never delegate away the power of the board – the common property belongs to all of the individual homeowners. The board has a fiduciary duty to the owners at all times. There is no right to financially benefit a property manager or board attorney. All contracts should reflect these principles. Also, associations must ensure that their respective boards follow N.J. State laws on elections in common interest communities. The Department of Community Affairs (DCA) has oversight into election irregularities, which should be reported to them. Links to DCA forms and other resources can be found on the C-IHC website at www.c-ihc.org/resources.

We common-interest community members must wake up and get involved with C-IHC and fight with them to help stop poor board practices and outright abuse! We can do this by contacting our legislators to seek more protections in the laws. There is an Assembly Bill A-5239 by Joe Danielson that we MUST support. It provides standards for election and recall of CIC officers and restricts certain expenditures. We also need legislation that would mandate professional board training.

Then, perhaps we will have much fewer "Thou Shall Nots" and all-around better performance from our boards, helping all New Jersey owners take back our rights to control our property!

Do you have an owner's story that you'd like us to publish? Send it to info@c-ihc.org! Articles may be edited for length and/or clarity at our discretion and submitted for your review before publication.

Find more resources and support us through our website at www.c-ihc.org.
Join the conversation on our Facebook page.