



Stand Up for Your Rights

PROTECTING THE RIGHTS OF ALL COMMON-INTEREST HOMEOWNERS THROUGH EDUCATION, CHANGES TO LAWS AND IMPROVED ENFORCEMENT – THAT IS WHAT WE DO. HERE IS THIS QUARTER’S GUIDANCE.



FEATURE STORY

DEALING WITH YOUR HOA: WHAT YOU NEED TO KNOW

To successfully deal with any issue in your association you need to understand the governing documents and the most effective engagement strategies.

[Read the story on page 3.](#)

OWNER’S CORNER

WHO PAYS FOR THE CLUBHOUSE AND BAR?

A New Jersey Lake Association operates with two tiers of membership, yet demands *everyone* pay for anything it feels is related to “lake upkeep,” including a bar!

[Read the story on page 8.](#)

IN DEPTH

FROM COOP TO CONDO – WORTH IT?

“Convert to a condo,” they tell you. “You’ll get a brand-new garage.” But what are the implications for your rights? Coop to condo conversion can be tricky, as outlined in this piece.

[Read the story on page 5.](#)

ALSO INSIDE

President’s Message | Election Law Notes | Legislation to Watch

President's Message



It's obvious to many owners that there are serious problems in association governance. Basically, these boards have far too much power and owners very few actual protections. The most common question people ask is "How did we get here?" The answer is fairly simple and involves both human nature and the nature of government. In our Summer column I examined the timeline which revealed the delays by government in even acknowledging the need for any owner protections.

When government decided its only concern was to protect prospective purchasers, the law and its enforcement reflected that concern. Thus, we have a Planned Real Estate Development Full Disclosure Act, extensive regulations implementing it and a well-staffed Planned Real Estate unit to oversee reviews. Although by no means perfect, that unit does a commendable job in preventing the outright frauds that previously occurred. Unfortunately, as another article in this Newsletter shows, the responsible agency's decades long failure to include cooperative conversions in the ambit of its responsibility (the causes of which directly resulted from allowing unchecked decisions by incompetent people) resulted in a predictable disaster to both owners and tenants.

It is somewhat understandable that at the outset, legislators believed while developers might pose a danger, owners controlling their neighborhoods would not require extensive protections or governmental oversight. Thus, it never mandated standard governing documents but allowed each developer (actually its attorney) to establish any it desired. It also allowed the developer to control the association governing board and only added owners as sales increased. What the minority of owners on the board learned was that the board could act dictatorially. As the owner of the development, it is understandable that the developer wants governing documents favorable to his control. Moreover, as the sole owner, the developer justifiably does what he pleases without any owner input. (As one would expect, on many occasions the developer will permit owners to do things, such as use barbeque grills, despite governing documents banning their

use. Developers want purchasers to be happy and avoid actions that could interfere with sales.) Once the owners assume full control, they too often follow that dictatorial model, despite the fact that it is entirely inapplicable to them. This serious problem is compounded by the fact that almost all associations are formed as non-profit corporations under Title 15A-which is singularly unsuitable to the governance of what are mini governments consisting of people's homes and not entities with financial or eleemosynary interests. And this is where human nature and the marketplace converge to undermine any hope owners have for effective protection.

Even with the relatively new election law, owners face a serious uphill battle against a board that can rely for support on both the property manager and association attorney, both of whom are dependent on the board for their employment and payment. Depressingly, far too many association attorneys contend, improperly, that the board essentially is the association and doing what the board wants is acting for the association. Thanks to human nature, those wielding power over others soon begin to see the situation in terms of "us versus them". In this case the board "us" also controls virtually everything that occurs in the association. Under the law, the board is responsible for overseeing and protecting common property. In reality, it controls the lives of every owner, can issue all manner of rules, impose fines, create extra judicial liens and foreclose on homes. Associations provide ample evidence why America's founders knew that the only way for a democracy to function was to both divide powers and instill checks and balances. There is neither in associations.

Consider, while owners have a right to dispute resolution (ADR), it is one set up by the board. When boards fail to abide by owners' guarantees to access financial records or have binding decisions made at open meetings, owners can file a complaint with the understaffed state agency. Compliance is problematic considering the imbalance in power and the fact that association attorneys make far more profit disputing agency efforts than complying. This is exacerbated by the fact that the board is usually, knowingly or unknowingly opposed to compliance with owners' rights. (Unknowingly because there is no requirement that board members take any training.) In addition to

Continued on next page...

President's Message, continued

lacking an “independent judiciary”, associations lack a legislative body that makes rules. Although these may be impractical within associations, there are ways to constrain board control (some as simple as mandating state written uniform governing documents, subject to specific exceptions, overseen by the State, where not suitable to a specific association, and external ADR independent of board influence.)

Even with election laws, I just encountered a situation in which an association board president imposed an absurd rule on the 10% objection vote that one would not anticipate in

writing election rules. (The only reason I am not specifying it is to avoid giving other associations more ideas on thwarting owner objections...).

The only effective way for owners to authoritatively oppose a board violating its fiduciary obligations, governing documents or owner rights is to file a lawsuit. But, without the law providing owners with counsel fees, unfortunately that is too expensive to be a realistic option for all but a very few owners. This problem makes the solution obvious, but one which requires legislative action.

-*Ed Hannaman* President, C-IHC

What You Need to Know About Dealing With Your HOA

by Margaret Bar-Akiva, C-IHC Board

Someone recently observed that she is “constantly amazed at the level of ignorance people have for the single biggest asset they own.” She was referring to homeowners who buy condos or townhouses in a homeowners’ association (HOA) and are completely unaware of the documents and restrictions that govern these types of communities.

The stress of buying and moving to a new home can be overwhelming, and reading boring legal documents during that exhausting time is the last thing people think of. But the cost and the aggravation that can come as a result of this negligence can be much more painful.

In my experience, people get into trouble with their HOA boards because they are not aware of the restrictions, many of which often seem trivial and bewildering to homeowners when they first encounter them. But missteps in your dealings with HOA rules can spiral downwards very fast and the odds are that the homeowner will be on the losing end.

So what can a homeowner do to avoid unnecessary aggravation and legal woes?

- Acquaint yourself with the Association’s governing documents, preferably before you move in. (You will find a list of these documents at the end of this article.)
- Inquire about the forms and procedures necessary to make any changes (architectural or otherwise) to the exterior of your home. Get everything in writing to avoid future misunderstandings.
- If the guidelines are unclear, ask for clarification from the property manager, the office staff or board/committee member.
- Wait for the written approval before you begin any of the work. Be aware that obtaining a local permit for work will not immunize you from an association violation.
- If misunderstandings arise (and they will) do not lose your temper or offend staff and board members. Human nature being what it is, homeowners risk escalating the problem by losing their cool instead of trying to calmly remedy the situation.
- If you feel your rights have been violated or you have been unfairly fined, request an alternative dispute resolution (ADR). New Jersey requires boards to provide you with this option by an independent arbiter.

Continued on next page...

What You Need to Know, continued

It is important to remember that although there are many honest board members who are serving their communities for free and are doing their best to treat residents equitably, that is not always the case. The same applies to the professionals hired by the board.

- **Declarations of Covenants and Restrictions (CC&Rs):** These are the community's fundamental documents. They are legally filed and outline the limited and common elements, the basics of governance and the rights of the board, association, and residents. They usually contain a legal description of the development, common areas, amenities, dues and fee requirements, maintenance obligations, and remodeling and development restrictions.
- **Articles / Certificate of Incorporation:** HOAs are often non-profit organizations, so they must file articles of incorporation with their designated secretary of state. These documents contain key information about the structure and operation of the association.
- **Bylaws:** Bylaws are the formal rule book for the administration and day-to-day management of the association. In the bylaws, you will find information about the specific powers and duties of the association, board, and management company. They also address items such as meeting requirements, voting rights, and election procedures.
- **Rules, Regulations:** These documents are the community's general rules and regulations. This is where you can find specific details about things like parking, fence heights, pets, and architectural guidelines and standards.

Thank You for Getting in Touch!

C-IHC appreciates learning of the problems and abuses owners are facing. These assist in focusing our attention on remedies. We offer individuals general guidance and information. Our goal is to remain focused on the big picture; specifically, protecting the rights of all common-interest homeowners through education, changes to laws and improved enforcement. Please remember that we are an all-volunteer organization. Thus, we are not able to respond quickly to specific time-sensitive issues such as those involving an imminent election or an ADR. Thank you for understanding that while we appreciate learning of an issue, we may not be able to respond in the time you desire.

NOTE: There is a hierarchy among these documents exactly as listed above (except as to the Certificate of Incorporation, which is simply to establish legal status). Declarations and master deeds are controlling over bylaws which take precedence over rules. Knowing this can help if you are being forced to follow a rule that contradicts either the bylaws or Master Deed or Declaration. To find out the actual authority or duties exercised by any property manager the board hires, you'd have to see the contract, which most boards will not share. Be advised that regardless of the powers a property manager exercises, the board is ultimately responsible, so any difficulties with the manager should be brought to the board's attention. The same rules of calmness and courtesy apply in dealing with the property manager as with the board, as does the desirability of putting all understandings in writing.



From Coop to Condo: About That “New Garage...”

by Cheryl Gandy, C-IHC Board

Your cooperative board is trying to convince you that it is in your all-around best interest to “exchange your cooperative shares for a condominium deed” in order to raise money for capital improvements to the building. Not only will you realize an immediate appreciation in the value of your unit, they may say, but you will also gain a shiny new garage in which to park your car (whether you have a vehicle or not!).

Indeed, capital improvement projects can enhance a cooperative property’s overall value, yet there may be less disruptive financing options available, and you could stand to lose some rights as a homeowner. Before addressing these alternatives, first consider these two things: your exposure as an owner of shares in a cooperative corporation with a “proprietary lease” that designates your exclusive occupancy your unit”; and your participation in a condominium conversion (to pay for that new garage).

Prior to the sale of any unit, the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 (PREDFDA) requires that the developer register an offering plan of the intended conversion, with the New Jersey Department of Community Affairs (DCA). As registrations can be expensive, shrewd developers may petition the DCA for an exemption, through crafting a disingenuous description of the transaction. For example, the proposed “exchange of cooperative shares for a residential deed” does not constitute the sale of a unit within the meaning of PREDFDA and is therefore exempt from registering with the DCA – meaning that you may stand to lose protections as a homeowner.

Until recently, the DCA has granted such exemptions, leaving unsuspecting shareholders at the mercy of the developer and the cooperative board. Without the statutory protections of PREDFDA, the developer and the cooperative board are free to, for example, create a “mini co-op” inside of a condominium and charge shareholders in the mini co-op usuary rates for monthly maintenance fees.

This exemption has been especially controversial since cooperatives are specifically

addressed in PREDFDA: “A planned real estate development refers to ‘any real property situated within the State . . . which consists of or will consist of, separately owned areas . . . 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.’” The statute further states that. “[t]his definition shall specifically include, but shall not be limited to, property subject to the “Condominium Act any form of homeowners’ association, [and] any housing cooperative . . . “.

Exemptions are narrowly tailored to address several specific situations (e.g. actions by the Federal government or pursuant to a court order), NONE of which can even remotely be said to include a co-op to condo conversion.

Requiring the developer to register with the DCA provides purchasers with certain disclosures and assurances against any risks that may arise from a lack of information or any misrepresentations. For instance, the registration application must include: a statement that the developer has never been convicted of a crime involving any aspect of real estate sales; a status report of the developer’s compliance with all required laws, ordinances and regulations associated with the cooperative; the developer’s financial statements and any bankruptcies during the last five years; and any other information that the DCA deems necessary to assure full and fair disclosure.

A condominium conversion is quite complex and will not be as simple as your cooperative board may have indicated. Only through the developer’s registration with the DCA which will require a full disclosure of the transaction (and not a self-serving narrative), in addition to consultation with an experienced attorney, can you make an informed decision on whether a conversion or some other means of financing is the best way to pay for that garage.

Stay tuned.

Notes on the Election Law

by Ed Hannaman, C-IHC President

The C-IHC website offers a [basic election guide](#) for review and download. Following are some suggestions for determining whether you see if your association is in compliance. (If it's not, you can notify DCA's Bureau Of Homeowner Protection.)

- An easy way to figure out the various times is to start with your election date and work backward. For example, if the election is on November 30, the minimum 14-day and maximum 30-day notice of election must occur by November 26 or November 1 respectively, and the minimum 30-day and maximum 60-day notice to submit candidacy would be October 31 or October 1 respectively.
- The only eligibility criterion for becoming a candidate for election to the board is that you must be an owner in *good standing*. (In order words, paid up on association dues and charges.) An owner who has an appeal pending or who is in compliance with a settlement is considered to be in good standing.
- Owners must have a minimum of 14 days to submit their candidacy. If associations have no nomination deadline, a nomination is deemed valid if submitted one business day prior to the mailing of the election notice.
- Owners must be notified if they are not in good standing at least 30 days before the election. (Note that regulations make this a minimum of 14 days for associations with fewer than 50 units.) Such owners can resolve their status up to five days before the election.
- The election notice must contain a copy of the ballot. If bylaws authorize the use of proxies, absentee ballots also must be provided. Service of notices can be made electronically if the member or voting eligible tenant agreed to this in writing.
- Ballots must be cast anonymously.
- Owners have the right to view ballots (which must be anonymous) up to 90 days after the election. The same right of access applies to electronic ballots.
- Associations can make provision for write-in ballots. If the election is for specific board positions the ballot must show that as well as if it is for different terms. A recent Regulatory change allows owners to remove a board member by a petition signed by 51 percent of the owners.
- Any member who is appointed to serve out a vacant position must stand for election within a year of the appointment.



These are only a few of the basics. Before asserting a violation, we strongly recommend that you read the law (NJSA45:22A-45.2 et seq.) and the Regulation (NJAC 5:26-8.9 et seq.).

New Jersey Legislature: Legislation to Watch 2023

Compiled by Joyce Murray, C-IHC Board

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.

[A1783](#) Q DeAngelo, W. Concerns installation and maintenance of solar panels in common interest communities.

[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.

[S2505/A1755](#) Y Sens. Smith, Bob/Greenstein Asm. McKeon, J. Calabrese, C, Conoway, H.
Requires installation of operational automatic rain sensor on lawn sprinklers as condition of sale and on lawn sprinklers on commercial, retail, or industrial property and in common interest communities within specified timeframes.

[A2552](#) Y Murphy, Carol Establishes "Common Interest Community Task Force."

[S2662/A4488](#) Q Sen. Singleton, T; Asw. Lopez, Y. Limits common interest community regulation of certain vehicles.

[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.

[S2935](#) Y Sponsor: Greenstein, Linda R. Requires certain local authorities to inspect, maintain, and repair fire hydrants in planned real estate developments.

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

Continued on next page.

[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.](#)

[A4106](#) Y Lopez, Yvonne/Jimenez, Angelica M.
Requires association of age-restricted common interest community to permit dwelling owner to transfer property without regard to age of buyer.

[A4377](#) Y Murphy, Carol Expands DCA oversight over common interest communities; establishes trust fund, advisory council, and ombudsman office.

[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

A Lake, a Clubhouse and a Bar – Who Pays?

By a Lake Community Owner

We are homeowners in a 1933-incorporated New Jersey lake association along Lake Parsippany in which membership has been voluntary since incorporation. From the beginning homeowners here have not been required to join its associated voluntary social club unless they opted in. However, in 2019 a judicial determination made it mandatory for 2,200 homeowners to pay an easement fee towards basic lake upkeep. Understandable enough, but this “upkeep” has morphed into something much larger.

We have a unique scenario in our community which residents call a “ half and half” Association. One half, called “Basic easement members,” has participation and voting rights under New Jersey’s Planned Real Estate Development Act (PREDFDA) and its 2017 “Radburn law” amendments, even though they do not own any common property in the Association by deed. The other half of the association, called “Premium” members, pay an additional optional fee towards the recreational/social club activities as before. This premium membership remains open to anyone whether they are a lake resident or not.

The 2019 ruling meant that all lot owners became "easement members" of the Association. However, the legislature and the courts did not require us to join any further recreational activities of the lake association or become “Premium” members unless we opted in at an additional fee.

Continued on next page.

Owner's Corner, continued.

The DCA further clarified in 2021 that the only common expense that was mandatory was basic lake upkeep, and that payment of this fee was adequate to grant homeowners full voting and participation rights in the Association

However, in 2022 our association's board has distorted that basic, and minimal upkeep obligation into one that allows it to charge everyone with lake access for *anything* the board wants to spend money on that it thinks is lake-related. The board sent a mandatory bill to all basic homeowners covering costs related to the Premium social club members in the Basic fees, including all clubhouse-related expenditure with a proposed new liquor bar!

It seems that the board members believe there is no limit to what constitutes a "basic lake upkeep expense." And why should they care since the board decided that those of us with limited obligations are *not entitled to vote on any of its proposed plans/operations or changes to our bylaws?* Thus, this board is making unilateral decisions without providing a voice to the great majority of the 2,200 people being forced to pay whatever it wants to charge.

Can an association board subject to PREDFDA, based on principles of democratic governance, unilaterally decide to operate this club bar without the majority vote of all members? Can it do so especially when it is not authorized by any governing documents? Can it take such an action that is completely opposed to the judicial determination described as "fees for basic lake upkeep?"

In 2021, New Jersey's Department of Community Affairs (DCA) sent a letter to our current Board President affirming that a clubhouse and swimming cannot be part of a mandatory fee based on deed obligations. Yet the association's attorneys say it is absolutely legal to do so!

We are victims of the same abuse that served as the foundation for our country's revolution, namely, taxation without representation.

The board knows we cannot afford to keep litigating, so we are hoping for help from the State. Everyone with an obligation to pay basic lake expenses should vote for board members who are accountable to them and who will impose costs for actual lake expenses and oversee basic lake upkeep. Are community association Boards like ours empowered to make decisions as if they own the common properties as business owners or are they fiduciaries who need to strictly follow the law? This is a question that the Legislature should address and fix.

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](#).**

Copyright © 2023 Common-Interest Homeowners Coalition. P.O. Box 162, Kingston, NJ 08528. (609) 807-