



# No Elections? Corruption?

HOW DO YOU SOLVE THE LARGEST PROBLEMS FACING COMMUNITY ASSOCIATION HOMEOWNERS, ESPECIALLY WHEN STATE ENFORCEMENT IS LAX AND REGULATIONS ARE BEING ATTACKED?



## FEATURE STORY

### **PETITIONING FOR AN ELECTION**

Is your board lax at holding regular elections or even skipping them altogether? You have a legal remedy to help you get things back on track.

*Read the story on page 7.*

## LEGISLATIVE PERSPECTIVE

### **A NEW BILL FOR AFFORDABLE HOUSING**

Our analysis of a new bill going through the NJ Legislature that could reinvigorate administration for affordable housing. We urge you to support it.

*Read the story on page 3.*

## IN DEPTH

### **FOLLOW THE MONEY**

Everyone knows the attraction of money, and it's no different in associations. That can lead to poor decisions and even corruption. As an owner you have the right to see financial records.

*Read the story on page 6.*

## **ALSO INSIDE**

**When LLCs Move In | CAI Hobbles Election Regs | Legislation to Watch**

## President's Message



This past holiday season I spoke with two owners who contacted C-IHC with problems that reminded me why significant changes to the association paradigm are necessary. The first was an owner who unfortunately suffered a serious medical event that resulted in a condition that cost them their job. Without income, the owner naturally fell behind on association fees. One can legitimately expect that the association would file a lien to protect its interests. However, although the association was not in any financial distress, it declined to work out any payment agreement. Instead, it promptly sought legal action against the owner, (which naturally included attorney fees that escalated the amount owed far beyond the association fees). The association then proceeded to foreclosure and ultimately completed an eviction. So, a few days after Christmas, the association literally threw the owner out of their home.

The other caller was a senior citizen owner with whom the association refused to cooperate with to obtain a reverse mortgage. The association refused to explain why it would not fill out a short questionnaire the bank sent it. There are two probable explanations: either the association did not seek or did not qualify for approval from the FHA. This is significant as FHA approval requires some basic safeguards such as making sure the association is financially solvent (e.g., has adequate reserves and a low percentage of deficiencies in payment.) It is doubtful that an owner buying into an association would expect that it would be an impediment to their personal financial opportunities. Any owner 62 year of age or over should check with their association to see its position on FHA qualification before they need or want a reverse mortgage.

Notably, one criterion for the mortgagee's approval for such a transaction is that the owner is paid up in association fees, which this owner was. (Ironically, a senior strapped for cash and sitting on valuable property may very well need to extract

equity from their home to keep paying the association fees.) An association may not care about that, because if fees are unpaid it can foreclose and sell the property itself, which provides a nice profit to the association attorney. If any party has a concern, it is the lender that wants to assure it is not taking a risk. There is no reasonable risk to the association from a member obtaining a reverse mortgage.

What these cases have in common, besides the cruel abuse of association power, is the misguided law that allows associations to easily obtain administrative liens (with no due process for the owner) and ultimately foreclose, *although it is not the purchase money lender*. The law also provides no specific obligation to cooperate with owners in personal financial transactions. Although this could be remedied by appropriate amendments, the existing law requires associations to protect and further (or, in the Condo Act, not be inconsistent with) the health safety and general welfare of the community residents. (see Section 14j of the Condo Act and Section 44b of the PREDFDA.) The problem is enforcement.

When authorizing the formation of associations, it is obvious that the legislators could not anticipate the way in which many would act against the interests of the owners. The virtually unlimited powers statutorily granted associations (along with *carte blanche* to add in more to the governing documents) is aided by institutionally inadequate enforcement of the law and an unequal access to the courts. Owners pay all their legal expenses while the Board can rely on all the association owners to pay for as much in legal services as it wants. Nothing in the public offering statement or in any literature given to subsequent buyers informs them of the incredible powers or severe adverse financial impacts associations can inflict on owners.

There are ways for an association to protect its financial interests without punishing owners by taking their home, evicting them or denying them the use of their own equity.

The curtain on the dangers of buying into an association is slowly lifting and C-IHC aims to continue assisting in doing just that.

-Ed Hannaman President, C-IHC

# Affordable Housing: Restoring the Legislature to its Rightful Role

by Joyce Murray, C-IHC Board

For nine years the fate and the regulations of the N.J. Council on Affordable Housing (COAH) have been somewhat in suspension, while the courts took over the agency’s efforts in calculating the housing need quotas. Now a new bill in both houses of the Legislature (**A4 and S50**) aims to restore the role and function of dealing with affordable housing. Recently, the Legislature moved at lightning speed and approved A4/S50. It’s now P.L.2024, c.2. Following is our review of this bill from the viewpoint of homeowners living in common-interest communities.

### Origins of the Fair Housing Act

In 1985, the N.J. Legislature enacted the Fair Housing Act in response to court decisions regarding affordable housing (called the Mount Laurel decisions). These decisions held that every municipality in a growth area had a constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's present and prospective needs for affordable housing. They also stated that the Legislature should be the entity to develop a statutory plan for that goal. COAH was created under that law to manage the program, which it did for 25 years.

In 2010, the then Governor of New Jersey, Chris Christie, suspended the operation of the COAH by executive order. The New Jersey Supreme Court overruled him, but upon the failure of COAH to take action, the court began enforcing the mandate. **A4 and S50** (hereinafter the “bill”) are attempts to restore the role and function of the Legislature in formulating the overall plan for dealing with the affordable housing mandate.

**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.

### Reassigning COAH Functions

Although A4/S50 technically abolishes COAH, it maintains many of the functions of that agency by parsing them out to the NJ Housing Mortgage and Finance Agency (HMFA) and the Department of Community Affairs (DCA). Of note, the bill creates in Section 5 an Affordable Housing Dispute Resolution Program “that shall have the purpose of efficiently resolving disputes involving the Fair Housing Act.”

### The Effect on Common Interest Communities

Housing developments with common amenities, that is, homes or condominium units sold to individual owners along with a pro-rata share of the common amenities in the development, are known as common interest communities (CiCs). Because of land-use density, and the resultant economies of scale, *these are the most prevalent, if not arguably the exclusive, form of production of affordable housing.* The governing boards of homeowners associations of CiCs have almost the equivalent powers of a municipality, including the ability to “tax” owners in order to raise money to repair, replace and manage common elements. Because of these quasi-governmental powers, N.J. passed several laws giving owners living in such communities (including affordable-unit owners) special protections and oversight by the State. This oversight includes, but not limited to, the right to fair elections, record access, and alternative dispute resolution (ADR). (See N.J.S.A.45:22A-21 et. al, and N.J.S.A.468B-1 et seq.)

When an association board violates the law in complying with these protections, the board-controlled ADR process is often ineffective to correct the violations. Unfortunately, owners then must hire an attorney to litigate against their association to enforce the statutory law. The association's attorney and defense costs, in contrast, are paid by everyone living in the community, including the owner suing. It's an appalling state of affairs for most owners, but an unconscionable situation for affordable unit owners who have little resources to litigate.

### C-IHC's Position

C-IHC believes that this is a necessary and long-overdue bill. It restores the Legislature's role, and State administrative oversight for the Mount Laurel mandate. However, C-IHC believes that it is equally important to bring to the Legislature's attention the plight of affordable housing owners living under CiC management, and how their problems could be addressed by certain amendments to the bill.

Although there are provisions for housing affordability assistance for affordable unit owners (including helping to pay common maintenance fees) in current law, they should be **required**, not permissive. (See Section 30 of the bill). Assistance programs to help pay common maintenance fees should be prioritized over other programs, such as those offering down-payment assistance for people looking to buy homes. Owners of COAH units should be made aware of available assistance by the municipality. Rapid increases in property taxes and common monthly maintenance fees have placed these owners in jeopardy of becoming homeless.

The Affordable Housing Dispute Resolution Program in Section 5 of the bill should be expanded to hear disputes among affordable unit owners and their assoc. boards; not just disputes between municipalities and builders. CiCs have been deemed "creatures of the Legislature" and the powers of the developer, and by extension, the association board, are subject to the Legislature enacting controls over them. (See Berkley Condominium Association Inc. v. Berkley Condominium Residences, Inc., 185 N.J. Super. 313, 319 (N.J. Super. Ch., 1982).

It is undisputable that disputes between COAH unit owners and their associations fall under the definition of disputes "involving the Fair Housing Act - *those units would not exist without it*. The Legislature should take this renewed interest in affordable housing to not only address its development, but the plight of those living in it. We commend the Legislature for passing this important bill and urge all C-IHC supporters to contact their State Representatives with concerns not currently addressed.



## Case Note: The Court Hobbles Election and Meeting Regs

By Ed Hannaman, C-IHC President

On February 23, 2024, the Superior Court Appellate Division issued a decision in response to an objection to election and open Meeting regulatory provisions filed by the Community Association Institute (CAI). The CAI challenged many provisions in both election and open meeting regulations. One was an objection to offering Alternate Dispute Resolution (ADR) 30 days before the election. The DCA agreed to eliminate that requirement if the owner had already been offered ADR.

Current law required that an association offer ADR to an owner at least 30 days prior to an election. Thus, if an owner has been offered ADR on a matter at any time, no matter how far in the past, but prior to an election, and the owner was placed in bad standing at that time, the association need not offer ADR again prior to an election. Despite the fact that now an association need not offer ADR in such circumstances, an owner may wish to request it and see what happens.

Although the court protected the requirement for secret ballots for bylaw voting, there is no longer a requirement to provide either or both a proxy or absentee ballot for them as there is for board elections.

The court removed the regulatory requirement that the minority of owners in affordable housing have a seat on the board dedicated to representing their interests. The law only made that an option for associations to put in their bylaws (which basically rendered it pointless).

The worst and most bizarre part of the decision basically removed the need for a board to ever take a vote on a meaningful matter in an open session. Anytime the board contends it is addressing one of the four very broad and subjective matters it is entitled to handle in a closed session, it need not vote on it in an open meeting nor make minutes available nor disclose its actions. This completely destroys transparency and enables boards to do all manner of underhanded, impermissible and even illegal actions without any accountability to the owners. The court did this because the legislature used the words “deal with” instead of “discuss” as used in the Open Public Meeting Act. In that Act, when a body “discusses” matters in closed sessions, it requires an open vote. Apparently “dealing with” a matter would have absolved it of any need to vote in public.

*A full discussion of the decision is posted on the C-IHC website at [www.c-ihc.org/resources](http://www.c-ihc.org/resources).*

## When the LLCs Move In to Avoid Regulation

by Cheryl Gandy, C-IHC Board

Newark, New Jersey Mayor Ras Baraka summed up corporate ownership of residential properties as “eroding the American dream of home ownership as they convert owner-occupied homes into corporately owned rental units.” According to a 2020 survey by the New Jersey Department of Community Affairs, roughly 6 percent, or one in seventeen, residential properties in the Garden State were “institutionally owned.” The report however, did not account for corporate-owned condominiums acquired through “institutional investments in condominium associations.” Specially formed limited liability companies (LLCs) acquire condo units in bulk for the sole purpose of generating rental income.

These deep-pocketed institutional investors may present an attractive prospect for cash strapped condo boards, especially if there is a surplus of unoccupied units. However, without the appropriate protections in place, the board is at risk of losing control and a complete destabilization of the community.

Bulk ownership of condo units generates greater voting power and a means of maximizing corporate profits, as opposed to acting in the best interests of owner occupied unitholders. A strong corporate voting block may infiltrate the board, amend the governing documents, increase the budget, association fees and the number of rentable units, and may even exert enough influence so as to cause the conversion of the condominium into an apartment building.

Smaller investment entities may strategically limit the number of unit acquisitions in order to avoid being subject to local landlord tenant codes. For instance, in East Orange owners of fewer than five rental units are exempt from filing annual rent registration rolls, as a prerequisite for increasing the rent; and they are not bound by the 4 percent cap on rent increases. Since LLC membership is private, it is possible for some of those same members to be a part of other LLCs and strategically acquire the minimum number of units in the same condominium; consequently, they will own a substantial number of rental units without being subjected to local code enforcement.

Ultimately, it is the owner occupied unit holder who suffers, with potentially higher association fees, a more transient community, a possible loss of resale value and a complete disruption of a traditional condominium lifestyle.

It is incumbent upon condominium associations to become proactive before these corporate investments become a phenomenon. For example, amending the bylaws to limit the number of units that may be rented at any time, or petitioning local politicians to enact stronger transparency and disclosure laws. In 2022, the Newark City Council enacted an ordinance requiring LLCs wishing to purchase private properties in that city, to register a “responsible agent” in the State of New Jersey to handle all legal matters. This ensures that they are no longer able to hide behind their LLC status, in order to remain anonymous and unreachable.

## Follow the Money: Your Financial Disclosure Rights

by Ed Hannaman, C-IHC President

Everyone knows the importance of money in any endeavor. It's no different in associations. Even in a medium-sized association, money pours in at a high rate. Consider this: a 300-unit association with a \$300 monthly fee generates \$90,000 a month or \$1,080,000 a year. Significant money has a way of attracting people who want to get their hands on it, legitimately or otherwise. Thus, owners must be aware of their right to know how the association is spending their money, and that *they are not limited to simple summaries* that management may prefer to provide.

New Jersey law (Section 14(g) of the Condominium Act) requires associations to maintain records in accordance with generally accepted accounting principles (GAAP) and provides that such records are open to inspection by owners at reasonable times. The Act

specifically includes each owner's right of inspection to records of receipts and expenditures and unit owner records. (Associations can redact identifying information to preserve a unit owners' privacy.) This right is *unconditional*, meaning owners do not have to be in good standing or show any need to know.

If an association denies or unduly restricts your *right of access* you can file a complaint with the Association unit in the Bureau of Homeowner Protection. (Note that the state enforcing agency has not applied the right of financial access to include access to contracts, although any auditor would require such access to properly evaluate the association's financial condition. Although not specified in the law, a right to make copies is inherent in the right of access...

**Read the full article at [www.c-ihc.org/resources](http://www.c-ihc.org/resources).**

## Petitioning for an Election

Most owners are aware that the legislature amended the Planned Real Estate Development Full Disclosure Act (PREDFDA NJSA 45:22A-21 et seq.) to provide owners with the right of fair elections.

One crucial issue concerns the situation in which an association fails to hold an election or fails to hold one in the interval required. The interval is two years if there is no provision in governing documents. A provision in governing documents cannot exceed four years.

Both the statute (section 45.2 a) and regulation (NJAC 5:26-8.9) provide a remedy. The law states that 25 percent of the owners in good standing can submit a petition to any board member to hold an election. (A greater percentage is necessary if the governing documents provide for a greater percentage to constitute a quorum for an election).

As a practical matter, it is advisable to first alert the Board to this concern in writing. In many cases boards may be unaware of any time constraints on holding elections. Others may simply need prodding and be put on notice that owners are aware and will take formal action if an election is not held.

The association is required to hold an election within 90 days of receipt of the petition. If that doesn't happen or if there is no board, any owner or group can notify all owners and petition a court with jurisdiction to hold an election. The cost of such court action is a common expense.

The Reg allows owners to file a complaint about elections with the DCA (Bureau of Homeowner Protection, Association unit). If it appears that it is unrealistic to obtain an owners' petition or an attorney, owners may wish to pursue having the State take action. NOTE: If you have difficulty with this remedy, especially regarding getting to court, please let C-IHC know by emailing us: [info@c-ihc.org](mailto:info@c-ihc.org) *View and download C-IHC's election petition at [www.c-ihc.org/resources](http://www.c-ihc.org/resources) or use the [online form at MoveOn.org](http://www.moveon.org).*

## New Jersey Legislature: Legislation to Watch 2024

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

PA = passed Assembly PS = passed Senate PBH = passed both houses. Pamphlet Law = enacted

[A4/ IR S50](#) **Asw. Lopez, Asm. Caughlin et al.; Sens. Singleton, Scutari** **C-IHC = Y,Q**  
Reforms municipal responsibilities concerning provision of affordable housing; abolishes Council on Affordable Housing (COAH); appropriates \$16 million. PA; See the newsletter discussing this bill, the status of COAH and the impact on associations.

[A637](#) **Asm. Kean** **C-IHC = Y**  
Prohibits conflict of interests by governing board members or management employees of homeowners' associations.

[A691/S595](#) **Asm. Torrissi Sen. Tiver** **C-IHC = Y**  
Restricts occupancy of dwelling unit in age-restricted community to older adults following resale.

[A819 S450](#) **Asmn. McGuckin, Kanitra; Sen. Holzapfel** **C-IHC = Y**  
Requires mortgage lenders to maintain vacant, age-restricted dwelling units during foreclosure.

[A1006](#) **Asw. Munoz** **C-IHC = Y**  
Requires certain common interest community associations to publish certain information; requires that homeowners' association contracts for management and maintenance include 24-hour emergency services. Note: Permits attorney fees for owners if they sue for access to records and win.

[A1312](#) **Asm. DePhillips** **C-IHC = Y**  
Requires personnel at gated communities and multi-unit complexes to allow service of process.

*Continued on next page.*

**A1367 Asm. Marengo C-IHC = O**

Revises time period at which unit owners assume control of homeowners' associations. (Note: Opposition due to the fact that the bill appears to create separate associations, by building section.)

**A2208 Asw. McCann Stamato, Asm. Sampson C-IHC = Y**

Extends time period for tenants receiving federal housing choice voucher program assistance to locate new housing after landlord sells property. Note: NJ and Federal laws allow vouchers to be converted to imputed income to purchase affordable housing units.

**A2271 Asw. Lopez C-IHC = Y**

Requires association of age-restricted common interest community to permit dwelling owner to transfer property without regard to age of buyer. Note: this is actually the state of the law now, but needs to be spelled out to many associations.

**A2449 Asw. Quijano C-IHC = Q**

Requires training of planned real estate development association board members.

**A2450 Asw. Quijano C-IHC = Q**

Requires licensure of community management entity that contracts to conduct management services for planned real estate development association.

**A2558 Asm. Peterson C-IHC = Y**

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.

**A3438 Asmm. Wimberly, Reynolds-Jackson C-IHC = Y**

Creates program for installing standby emergency power generators in new senior housing.

**A3467 Asw. Murphy C-IHC = Q**

Expands DCA oversight over common interest communities; establishes trust fund, advisory council, and ombudsman office. Note: Bill does not require member of task force that represents solely owner interests

**A3472 Asw. Murphy C-IHC = Q**

Establishes "Common Interest Community Task Force."

**A3919/S686 Sen. Singer/Asmn.****Rumph, Myhre C-IHC = Y**

Prohibits common interest communities from penalizing members who place unit into living, revocable trust fund or classifying placement as title transfer.

**S1013 Sen. Greenstein C-IHC = Y**

Prohibits condominium associations from assessing insurance deductibles to individual unit owners or groups of unit owners.

**S1524 Sen. Turner C-IHC = Q**

The "Owners' Rights and Obligations in Shared Ownership Communities Act."

**S1776 Sen. McKnight C-IHC = Y**

Clarifies and expands landlord registration procedures; creates certain rights for tenants; makes certain changes concerning tenant notifications, inspections, and maintenance in multiple dwellings; permits percentage of affordable housing obligation to be satisfied by certain rehabilitation projects.

Find more resources and support us through our website at [www.c-ihc.org](http://www.c-ihc.org).

Join the conversation on our [Facebook page](#).

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