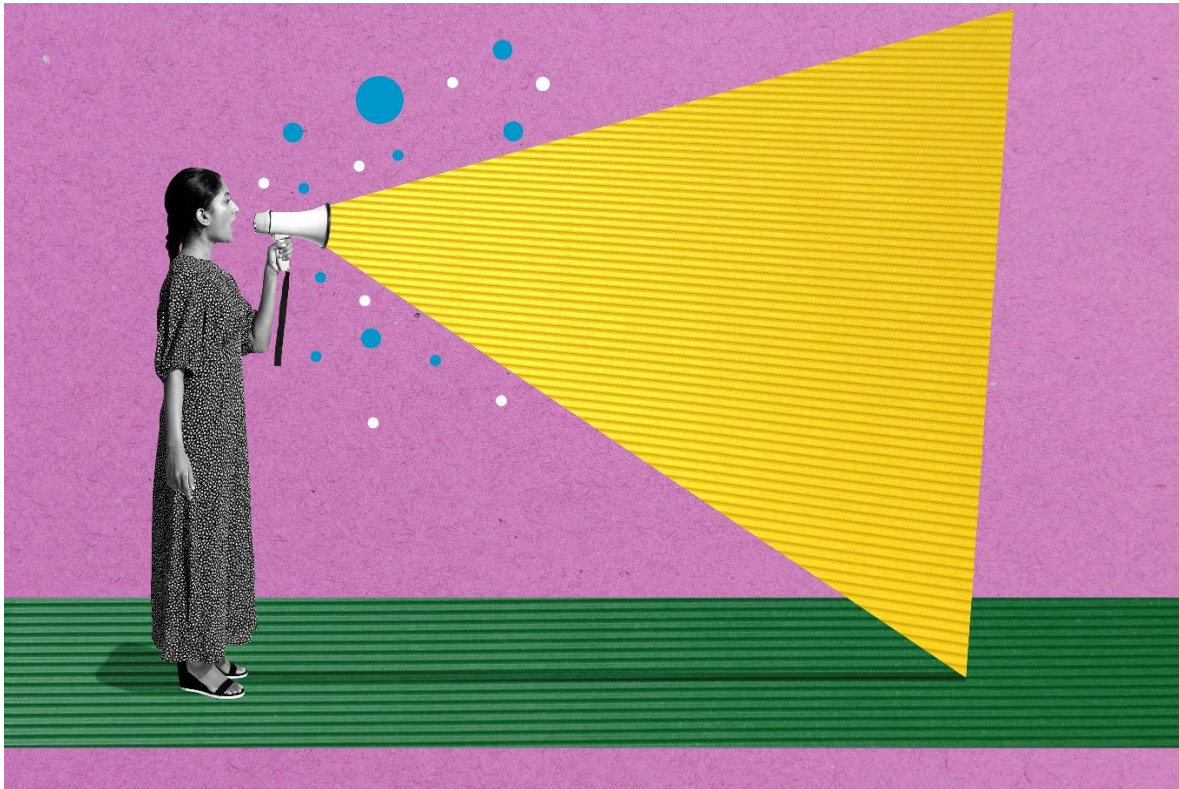




# Legislative Relief for Owners

PROTECTING THE RIGHTS OF ALL COMMON-INTEREST HOMEOWNERS THROUGH EDUCATION, LEGISLATIVE ACTION AND BETTER ENFORCEMENT



## LEGISLATIVE PERSPECTIVE

### FILLING THE HOLES IN NJ HOMEOWNERS' LAW

Most of the problems in New Jersey's communities come down to three major gaps in state law. We look into the genesis of these gaps, their impact and what needs to be done.

*Read the story on page 2.*

## PRO TIPS

### HOW TO SUCCESSFULLY TALK TO LEGISLATORS

Here are a few of our pro tips for effectively talking with your elected representatives so that they will understand your issues and support your preferred legislation.

*Read the story on page 4.*

## SOLVING PROBLEMS

### PROPERTY MANAGER WITHOUT A BOARD?

There is no regulation or certification for property managers, and in some cases these entities even run communities in the absence of an elected board! What can be done?

*Read the story on page 6.*

## ALSO INSIDE

History of C-IHC | Working with Other Advocate Groups | Legislation to Watch

## President's Message



We're all familiar with the phrase "Knowledge is Power." That truism applies to association matters. In almost 30 years of dealing with callers, I am concerned with the lack of knowledge many owners have about associations and their rights.

Although problematic, this is not completely the owners' fault. The State has done nothing to correct this serious deficiency in basic knowledge. There are certain owner rights and protections in the law (deficient as they are) and constrained enforcement from the State, but I assert that not more than a small percentage of owners are aware of either. To remedy this, C-IHC is urging the Legislature to create an owner rights and information guide. This would be available not only to prospective purchasers, but to all association unit owners.

As crucial as knowledge is, it is ineffective without a means to effectuate action based on it. Currently, the only way for owners to oppose wrongful board actions outside of the State's limited jurisdiction is through private legal action. For those not blessed with tens of thousands of dollars in extra money, that is not a viable solution. To address this problem, C-IHC is advocating two things – enhancing State enforcement and empowering owners by authorizing the award of counsel fees to them in a successful suit.

We will post relevant bills on our web site and email a notice when we do so that you can urge support from your legislators. (See our article in this newsletter on working with your legislator.)

Improving the law to effectively protect owners from unfair treatment and abuse will take time. It also will require overcoming powerful, highly motivated opposing interests. Here's how you can start to make a positive difference: Take the time now to familiarize yourself with your community's governing documents, applicable laws and the State's enforcement operation. That operation is conducted by the Association Regulation Unit in the [Bureau of Homeowner Protection](#) under the Division of Codes and Standards located in the Department of Community Affairs (DCA). The absence of any official publicity about this makes it a well-kept secret.

Go to the DCA website and find discussions on the four areas of jurisdiction the law has authorized the State to enforce. These are: the (recently court undermined) open meeting requirements, access to basic financial records, the provision of dispute resolution and fair elections. (It bears repeating that it is pointless to complain to the State on matters not within its specific jurisdictional areas. In contrast, it is a mistake to not file a complaint when you have an issue within the State's jurisdiction!)

Finally, review the tools and links available to you on [C-IHC website's Resources page](#) and let us know if you have any questions!

–Ed Hannaman President, C-IHC

## Filling the "Holes" in New Jersey's Homeowners Law

by Joyce Murray and Michael Roney, C-IHC Board

Legal protection of common-interest homeowners rights in New Jersey obviously leaves much to be desired, and addressing the holes in current legislation is key to C-IHC's mission. Homeowners' associations are required to be formed under New Jersey law when a community is being built as a planned real estate development or is deemed to be one by a court. Here's the root of the problem: Initially, the developer forming this kind of association writes all the governing documents, which differ from development to development, with no mandated standardization and appoints all members to the board. Those governing board members might include developer agents or employees. The law requires elections that stagger owner membership on the board starting once 25 percent of owners have purchased homes. Control shifts to owners when 75 percent of housing units have been sold. However, the developer retains one seat on the board as long as units remain unsold. This board-control shift is called *transition*. Until full transition, an association mainly functions as an extension of the developer's for-profit business entity. Both the developer and owner-controlled board members function as directors of a



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routine non-profit corporate entity, but the association is granted governmental authority over the lives of the owners.

An association is effectively a mini-government unlike any other nonprofit corporation. It adopts and enforces what are essentially laws, imposes fees to raise revenue, imposes monetary penalties in addition to the fees imposed, and can directly affect owners' lives such as (but not limited to) depriving them access to association facilities and barring them from parking on the premises. An association has the responsibility to provide and administer alternate dispute resolution, which rather than resolving disputes often functions as an association-friendly mini-court. Ultimately it can foreclose on and take title to owners' homes!

This has led to three major legislative holes in assuring good governance of these associations:

1. **Incorrect Standards Applied to Authorize Board Actions:** In general, current law overlooks the governmental nature of an owner-controlled board and allows its actions to be judged under the wholly unsuitable "business judgment rule." That standard affords boards wide discretion to take any action that isn't specifically prohibited under law or its governing documents. Application of the "business judgment rule" is inconsistent with judging actions under a democracy and is contrary to the standard used to judge the action of governmental bodies. Applying the governmental standard to evaluate all board actions would finally afford owners the ample protections they have with other governmental entities.
2. **Inadequate State Owner Protection:** Current law only requires certain developments, but not associations, to register with the State. That law also provides for many exceptions to registration. These exceptions have wreaked havoc on the enforcement of owners' rights and may thwart the enforcement of laws concerning public safety. Over the years the Legislature has enacted piecemeal protections for homeowners in recognition of the powers granted to homeowners' associations. However, no mechanism currently exists to provide the State enforcing agency with the basic information necessary to communicate with owners, or effectively enforce the laws that have already been enacted. In the vast majority of states, the State's Attorney General's office oversees common interest community homeowners' rights.
3. **Inadequate Training of Board members; No Regulation of Property Managers:** Because the Department of Community Affairs (DCA) Bureau of Homeowner Protection has been unable to locate or track associations and provide guidance, volunteer board members are forced to rely on professionals they hire to help them manage the communities. These include property managers, accountants and board attorneys. Those contracted by the board may not respect, much less prioritize, owner rights. Board members are not required to take any training or have any understanding of their fiduciary obligations. Other states have enacted laws regulating property managers, as well as requiring board member training. While large associations often rely on certified public accountants to assist them in preparing budgets, audits or reserve studies, there is no requirement currently that associations get professional or even informed assistance in these areas.

These are all areas that clearly need to be addressed with new legislation, which is why C-IHC actively works with legislators in Trenton to advocate for changes to the law. Watch this space or visit our website for new legislative proposals, and review this issue's Summer 2024 Legislative Update to discover which current bills are worth your attention. Most importantly, contact your legislators to demand support of these bills. Otherwise, nothing will change and owners will remain at the mercy of boards and their hired help.

## How to Successfully Talk to Legislators: Our “Pro Tips”

By Joyce Murray and Ed Hannaman, C-IHC Board

C-IHC expects that legislators will be introducing bills to increase owner protections. But here’s the rub: their passage largely requires owners like you effectively showing support for them. Legislators’ values, focus and personalities vary widely, but they do have a few things in common that are important to consider when interacting with them: They are busy. They want to do things that are popular that will garner widespread support. They also deal in the reality that perfection is impossible. Some legislators will always do the right thing for its own sake. That is admirable but by no means universal.

Owners often naively believe that to have an impact they must meet directly with their elected representative. While that is nice, it is preferable to request to meet with the legislator’s chief of staff or legislative director to discuss one’s concern. That allows the legislator to decide whether to sit in on the meeting. It also can ensure a timely meeting as these aides they have more flexible schedules. Even though the legislator is a “public servant” and you are a constituent, you must be polite and respectful. As for requesting a meeting, ask for a convenient time and don’t set demands on dates. Squeaky wheels may get grease, but all annoying constituents get is placated.

Most owners interested in bills that that would increase owner protections either directly (such as by providing counsel fees) or indirectly (licensing property managers) have had their own personal problems with their associations. When dealing with your legislator (which includes staff), it is crucial to restrain yourself from making your personal experience override the general point that impacts all owners. Unfortunately, many owners provide excessive and irrelevant details about their personal interactions. That is not helpful for legislators, as it tends to make the problem seem only personal.

Your experience should merely be the springboard to support the necessary reform. It is highly advisable to put your concern in writing (and leave it with the staff). That often helps you be succinct about the problem and direct about the

desired reform. While possible, it is often more difficult, or at least more obvious, to blabber on in writing about a problem. You’ve probably heard of the “elevator pitch.” That’s your goal. You should be able to provide the necessary information in five minutes or less. Let the listener ask if they want to hear more.

When advocating support for a bill, identify it specifically by number, ideally with the “A” (Assembly; e.g. A5567) or “S” (Senate; e.g., S7655). When dealing with a general matter (not an “I” bill) be objective. Refrain from making complaints about the “nastiness” of board members, property managers, association attorneys or employees. That is not helpful in supporting reforms. Legislators want to know that there is a general problem, not just one specific to you. (As an aside, it is a misuse of elected representatives to treat them as if they are your personal problem solvers.) They are elected to serve the public good. Your goal is to show that helping resolve the problem you’ve experienced is in the public interest, in this case the interest of all association owners.

When dealing with a bill which may have many sponsors, it may be helpful to contact the partisan staff office in the State House Annex and ascertain which staffer may be assigned to handle that bill. Often it will be the partisan committee aide assigned to the committee to which a particular bill was referred after introduction. Notwithstanding this, it’s always a good idea to make sure you contact the primary bill sponsors whose names will be listed on the bill and can be found at the Office of Legislative Services web page, which can be accessed at [www.njleg.state.nj.us](http://www.njleg.state.nj.us).

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*Editor’s note: See C-IHC’s listing of current key legislation in this newsletter. Also please see this issue’s article on the “holes” which need to be filled to better protect all New Jersey homeowners.*

## You Are Not Alone, But...

**Important Note:** The internet contains a great deal of information and advice for owners in dealing with their associations. However, you must be mindful that laws vary widely from state to state.

Thus, while some discussions on protective actions may apply equally across New Jersey, that may not be the case in other states. One relies on general internet advice at one's peril and should check with NJ law before acting on it.

C-IHC has been in contact with *HOA Reform Leaders National Group* (HRLNG), a national organization dedicated to reforming association laws. Although C-IHC and HRLNG may not agree on some specifics for implementing remedies, we concur with many of them and completely agree about the problems. We welcome New Jersey HRLNG members coordinating with C-IHC on legislative remedies.

It is quite interesting to realize that the problems owners in NJ have been experiencing and complaining about for decades are not unique to our state. There is something inherent in the association model that makes it a breeding ground for problems.

For me, it has largely to do with owners' ignorance about associations and understandable apathy compounded by the concentration of money in the hands of amateurs who are easy targets for unscrupulous professionals.

-Ed Hannaman

## The History of C-IHC

by Margaret Bar-Akiva, C-IHC Board

So how did C-IHC get started, anyway? The genesis occurred in 1996, when pursuant to Assembly Resolution No. 47, the New Jersey Legislature enacted the Assembly Task Force To Study Homeowner Associations. The panel consisted of three legislators (Christopher "Kip" Bateman, Guy R. Gregg and John Wisniewski), one developer's attorney, two managing agents, two attorneys from the Community Association Institute (CAI), and two homeowners association board members.

Although the Task Force was hardly representative of the interests of the individual homeowner, the hearings did draw the testimony and recommendations from many people who had purchased condos, townhomes and single-family homes in planned communities. It conducted its first hearing in November 1996 and three more in early 1997.

At these hearings many homeowners learned that problems in their own associations were not unique, and that similar conflicts were occurring throughout the state. It quickly became apparent that boards were acting as they did simply *because they could!* There was virtually no limit to how they exercised their power despite the negative impact it had on homeowners.

Among those who provided testimony at those hearings were Drs. Lois and Sam Pratt (November 1996) and Haim Bar-Akiva (January 1997). Both the Pratts and the Bar-Akivas had recognized early on that serious governance issues plagued this form of housing and, unbeknownst to either, both couples had begun to advocate for reform. Haim took the initiative of contacting the Pratts and several other homeowners whom he had met at the hearings to explore the possibility of forming an organization. In April 1997, the Bar-Akivas invited 15 homeowners, including the Pratts, to their home in Twin Rivers. It was there that C-IHC was founded.

A week later, at the Pratts home in North Bergen, Lois Pratt presented the group with a draft of C-IHC's bylaws and mission statement. Her extensive scholarly background and her research into the history of HOAs became the backbone for all subsequent legislative outreach.

Since then, C-IHC has grown into a successful non-profit organization supported by generous donations *and* a Rutgers Law School Pratt Grant...and we are still growing!

### Winds of Change

[The published testimony from the Task Force hearings](#) was filled with overwhelming evidence of associations' poor governance and unfair operations. Consequently, the Task Force Report prepared

recommendations for desirable legislative reforms to fix the problems.

The Task Force recognized that associations should no longer be considered as business entities simply because they are corporate. Instead, it adopted the prevailing principle that *associations are quasi-governmental entities, and as such, should be subject to the same regulations as public governmental bodies*. This distinction was of utmost importance because it requires the practice of open meetings, conflict of interest provisions, and other modes of operation that homeowners were entitled to, but had rarely experienced.

The C-IHC has publicly endorsed the [Task Force report](#) and has since promoted legislation and best practices focused on enhancing the function of HOAs while still protecting homeowners' interests. We have gained the support of several State legislators who appreciate our positions as being different from those of the industry groups. The C-IHC will continue to serve as the voice of homeowners living in condominiums, cooperatives, townhomes and planned unit developments.

When invited to do so, the C-IHC will come to your community to speak about the history of common-interest communities, owner issues and current legislation. We will also help you form an owner group so you can be heard by your board, property manager and legislators.

## Property Manager Without a Board?

Owners often complain about the actions or inactions of their property managers or property management companies. The current law does not license or regulate them. This is a glaring deficiency the Legislature proposes to remedy. C-IHC wholeheartedly supports both licensure and regulation which will include things like a code of ethics. IF the law is done correctly, meaning written to actually protect owners, it will be a big step forward.

In the meantime, owners should know that their boards hire the property manager. Therefore, unresolved complaints about the manager should go to the board and not the New Jersey [Division of Consumer Affairs](#) unless there may be some consumer fraud aspect to the issue at hand.

There is one serious matter that fortunately only occurs infrequently. Specifically, and typically restricted to smaller associations, a property manager manages a development in the absence of a board. This often results from a board slowly eroding until there are no members and there are no elections. (The election law should eventually reduce this scenario to an extremely rare

occurrence as word spreads of owners' rights to hold an election even in the absence of a board.)

A property manager managing in lieu of a board is not only problematic from an operational standpoint, but also violates basic concepts of ethics, agency and contract law.

Any property manager finding themselves in this situation should inform the owners and advise them to hold an election to seat a board. If owners fail or refuse, the "book answer" would be for the property manager to [submit a complaint to the Association Regulation Unit](#) under New Jersey's Department of Community Affairs' Bureau of Homeowner Protection. That office is understaffed and far behind, but at least there will be a record of the problem. Also consider petitioning a court for authority to act on behalf of the association or appoint a receiver to do so.

Without a board, a property manager has no legitimate authority to act on behalf of the association absent some dire need (e.g., making a payment to continue insurance coverage or taking action in response to a bona fide emergency). We expect that legislation regulating property managers will eliminate this – at least for those who wish to maintain a license.

## New Jersey Legislature Update, Summer 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

[A476](#) **Asm. Danielson/Wimberly** Provides standards for election and recall of officers for associations of planned real estate developments and restricts certain expenditures.

[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.

[A746/S503](#) **Asm. McGuckin/Kanitra; Sen. Holzapfel**  
Requires installation of emergency power supply systems to certain common areas of new planned real estate developments; provides related tax incentives.

[A819 S450](#) **Asm. 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: BILL permits attys fees for owners if they need to 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.

[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 COAH 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.

[A2480/S3121](#) **Asw. Quijano; Sen. Greenstein** **C-IHC = Y**  
Requires certain local authorities to inspect, maintain, and repair fire hydrants in planned real estate developments.

[A2554](#) **Asm. Peterson** **C-IHC = Y**  
Clarifies DCA's authority to ensure planned real estate development builders comply with disclosure requirements.

[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.

[A3472](#) **Asw. Murphy** **C-IHC = Q**  
Establishes "Common Interest Community Task Force."  
Note: Bill does not require member of task force that represents solely owner interests

[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.

[S762](#) **Sen. Johnson** **C-IHC = Q**  
Establishes penalty on planned real estate development association for failure to provide association members timely access to certain meeting minutes. (Note: the penalty would payable by the members, not the board).

*Continues on next page.*

*Summer 2024 Legislative Update (continued)*

**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.



## Selected Resources for Owners

Go to the [Resources](#) page on our website for additional useful links.

**Petition for Elections:** Late elections? NO elections?

- [Use this downloadable PETITION to force your board to comply with the law!](#)

**Homeowner's Strategy Guide:** Our Spring 2023 newsletter addressed the first steps to take when you have a problem!

- [Read our first steps article.](#)

**Talk With Other Owners:** Would you like to talk about your community issues with us and other association homeowners?

- [Join the discussion on our Facebook page!](#)

**Guidance from the State:** Do you need help with regulations, security and other issues? The New Jersey Department of Community Affairs (DCA) offers resources for you.

- [Download DCA's Handbook](#)

**How does the DCA handle complaints?** What can the state do if you are having trouble with your association? You'll find the answers to these questions and more in these forms.

- [Download DCA's Q&A](#)
- [Download DCA's Complaint Form](#)
- Call the DCA's Bureau of Homeowner Protection: (609) 984-7905, ex 5

**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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