FALL 2025 NEWSLETTER

CIHC COMMON-INTEREST HOMEOWNERS COALITION

The Largest Challenges You Face as an Owner

FREE SPEECH, LAWSUITS AND THE CHALLENGES OF ASSERTING YOUR LEGAL RIGHTS IN YOUR COMMON-INTEREST COMMUNITY

PRESIODENT'S MESSAGE

CAN THEY DO THAT?

Association fines can ruin a homeowner's finances. That's why you need to be aware of these key facts about what your association can and can't do.

Read the story on page 2.

BIG PICTURE

FREE SPEECH IN YOUR COMMUNITY

The right to free speech, which is essential to fair elections, is easily the most valuable tool for owners in dealing with their board. But, it must be properly used.

Read the story on page 4.

IN DEPTH

THE CHALLENGES AND PERILS OF SUING

When it comes to suing your association with an attorney you can afford, the deck is stacked against you. Still, it's not impossible under the right circumstances.

Read the story on page 4.

ALSO INSIDE

Your Questions | Legislation to Watch

President's Message

Can they do that? When people relay problems relating to boards that are acting improperly, violating governing documents or the law and otherwise abusing powers, the common question is: Can they do that?

The depressing answer is, Yes. The legislature granted boards enormous powers, incorrectly figuring that owner representatives would always be fair to their fellow owners. The real question is shouldn't someone be able to stop them? There are exiting remedies, none of which are completely reliable, and most of which require enormous effort. The Board holds all the power, controlling everything official in the association. There is no independent association legislative body, no truly objective internal judicial entity and no independent news media to report improper board conduct. Additionally, the board has a basically free attorney and a devoted property manager, both of whom owe their jobs to the board.

An individual owner confronting the board faces daunting odds. Naturally, not all owners are faultless – there are always some who refuse to comply with basic rules or deliberately annoy fellow residents. Boards are justifiable in acting to protect other owners and association property. But in cases in which boards unjustly abused owners such as with unreasonable fines or restrictions, there are only a few avenues of redress.

Naturally, one can appeal to the board itself for some relief, such as to allow periodic payments or more time to cure a violation, but that cannot be relied upon to provide relief. An owner can request alternate dispute resolution (ADR), which covers all association-related matters. The law requires all association to have a "fair and efficient" procedure, but allows the board complete control over ADR. In most cases ADR is performed by a person or committee appointed by the board or the board president. It is rare that an association contracts with or uses an impartial external dispute resolver (e.g. the municipal court dispute resolver or a law firm with no association representation). Owners are understandably suspicious when the firm acting as a dispute resolver represents other associations. The State does not review ADR outcomes and, except in blatant cases such as ADR by a spouse of a board member, or ADR members who have had disputes with the owner, accepts the board's word that it has a compliant system.

Even if one is successful in ADR, the board can simply ignore the outcome. Thus, the chances of relief from ADR are slim (but it has other advantages beyond the scope of this writing. Plus, the State does not enforce association governing documents – that is left up to the owners. An owner subjected to illegal discrimination may be able to obtain relief from the State Division of Civil Rights or the ACLU. But the owner must show legally actionable discrimination such as race based or in violation of the handicapped rights. Absent that situation, an individual facing action limited to them is on their own and is left to fund a lawsuit or move.

The good news is that an owner aware of generalized improper board action (e.g., not complying with governing documents requirements limiting its ability to expend money, or suddenly increasing fees without a public vote), has the ability to rally other owners. (See our free speech article in this issue.) New Jersey's election law (also known as the "Radburn Law") not only allows owners to petition to remove board members, it ensures owners have the right to petition to amend the bylaws. (A good start would be restricting the board from spending large amounts without owner votes, or issuing large fines).

The ultimate answer to who can stop dictatorial boards is the legislature – which is why C-IHC advocates for remedial legislation to give owners more rights and effective remedies.

-Ed Hannaman President, C-IHC

Q&A: Your Most Common Questions….and Our Answers

An ongoing series

Q: Are association audits legally required? (We haven't had one for over six years.)

A: As long as the developer maintains a majority of the board, the law requires an annual audit delivered to each unit owner. Once owners elect a majority of their own to the board this provision no longer applies. You therefore should review your association governing documents to determine if audits are required when under owner control. (This is not typical.)

Accountants for larger associations with significant funds may recommend an audit by an independent firm. If you are in an association that has significant funds (e.g. takes in $250,000 or more per year) and expenses seem excessive for that amount, you may wish to join with other owners and use your authority to propose a bylaw revision requiring an annual audit. It would be best to first ascertain probable costs because the owners will have to pay. Associations with lesser incomes may opt for periodic audits every three or five years.

If your association's governing documents *do* require an audit and the board does not comply, you can request alternate dispute resolution (ADR) to attempt to gain compliance, but at least point out the violation. Although an association must make ADR available upon request, its outcome is not enforceable. The unfortunate reality is that associations rarely abide by any ADR outcome unfavorable to their wishes. Ultimately you may have to go to court at your own expense, unless the court grants you counsel fees – which is discretionary and not common.

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. Therefore, 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 always be able to respond in the time you desire.

Q: Although I am a board member in good standing, the board shuts me out on its discussions outside of open meetings. What can I do?

There have been many complaints to the Association Regulation Unit (ARU) by those elected to the board that they weren't included in board discussions because they weren't in lock step with the pre-existing board or board president. In response, State law was amended to require that all board members be provided an equal opportunity to participate in any meetings of board members. (NJAC 5:26-8.12(d)) Additionally, again in response to complaints, the law prohibits removal of board members except "...in accordance with the bylaws or by the board for good cause directly impacting the member's ability to serve" (NJAC 5:26-8.11b). Based on complaints, that law also specifically prohibits a board from removing a member for disagreeing with the majority or for violating a confidentiality agreement without an ADR providing substantial credible evidence that the violation adversely affected the interests of the association members.

Having problems with your association? View and download our complete Q&A at www.c-ihc.org/resources.

Free Speech and Common-Interest Communities

By Ed Hannaman

People believe the First Amendment gives them a broad right to free speech. The protection, however, as well as being limited (the fire in a crowded theater example) is only from government suppression – as anyone paying attention to current events should realize. Thus, references in the Twin Rivers case to Constitutional rights and in legislation passed to correct the ills in Radburn are crucial. The courts and legislature have at last recognized the significant governmental nature of associations. Associations pass and enforce rules, can fine individuals operate under an elected board and impose taxes in the form of fees. For these reasons, unlike private associations, such as companies or clubs, associations cannot suppress free speech.

The right to free speech, which is essential to fair elections, is easily the most valuable tool for owners in dealing with their board. But, it must be properly used. In addition to the type of legal constraints referenced above, owners criticizing their board or its members cannot do so in a way that is libelous or slanderous. It is for this reason that owners seeking to get petitions signed don't refer to the board or members as thieves stealing money (unless there is unimpeachable proof). Alternatively, criticisms citing the board's actions or inactions are legitimate.

Residents are accustomed to freely criticizing their state and municipal governments as incompetent or lacking common sense without fear of receiving a threatening letter from the government's attorney. Unfortunately, when dealing with their association, owners often find that even valid criticism of the board (e.g., it ignores bylaws, doesn't solicit bids for work or hires inexperienced relatives at exorbitant pay), results in a threatening letter from the association attorney. This is a blatant attempt to chill owners' right to free speech. One reason for this is the very nature of board membership…at least at this point (before hotly contested elections become the norm).

Unlike actual politicians accustomed to criticism and opposition, association board members too often believe any criticism of their conduct is unwarranted, intolerable and must be stopped. In addition to a warning attorney letter, owners can expect that the board subject them to scrutiny and impose violations not applicable to others with the same conduct.

In recognition of the differences inherent in association operations, owners must be guided accordingly. Although owners dissatisfied with board conduct can and should have websites or other communications holding the board accountable, it is best done as a group. A lone owner calling out the board is an easy target. Using the right to free speech is the most efficient way to hold a board accountable. This must be tempered with an eye to the probable adverse consequences. These are best shared with others as there is strength in numbers.

The Challenges and Perils of Suing Your Association

by Ed Hannaman, C-IHC President

Owners frequently need to sue their association, and for good reason. Often that is the only way to get justice. Thus, the question we get more than any other is, "Where can I find a pro bono attorney?" For all intents and purposes, the answer is the same place you get a free plumber or electrician…in your imagination. Still, it's not impossible under the right circumstances.

If you think you have a bona fide case of unlawful discrimination based on such things as race, creed, color, national origin, or disability, there may be relief through the State's Division of Civil Rights in the Department of Law (commonly thought of as the Attorney General's office). If there is an egregious case of a violation of civil rights you may try the American Civil Liberties Union (ACLU) – another example of why it is important to recognize associations as essentially governmental entities. *Continued on next page…*

Suing Your Association, continued

Unfortunately, while the ACLU has many attorneys who donate time for a variety of issues, it is severely lacking in any who are familiar with and willing to handle homeowner association matters.

If you are in financial distress, you can check with your county or the State Legal Services to see if you qualify for representation. NJ Appleseed (njappleseed.org) may also consider taking your case if you are banding with a number of people and it has the potential to secure the rights of a broad base of New Jersey owners.

Absent those options, the prospects are dismal. Even if you are willing to pay for an attorney will find it difficult to obtain representation. It is a rare attorney who will agree to take on an association case on behalf of an owner, even for a fee. There are practical reasons for this, starting with any attorney familiar with association law is aware that the association attorney has virtually unlimited funding. An owner successful at the trial level can expect to have to face an appeal to the Appellate Division and probably then onto the NJ Supreme Court as the association seeks to protect its position-right or wrong.

In this battle, the attorney representing an owner must depend on that owner to finance the tremendous expense of lawsuits and appeals, and there is rarely an "open checkbook" for pursuing the case. In contrast, the association attorney is supported by all the owners (including the one suing), and the larger the association, the greater the potential support. Combine this with the fact that associations too often look upon non board members as their "subjects," and definitely anyone suing as the enemy, while refusing to accept defeat, even if wrong. Despite the fact that a majority of association attorneys realize their duty is to the association and not the board, there are too many who will support whatever position the board wants to take – despite countervailing legal or practical considerations. Notably, the association attorney makes more money when there is greater, longer-lasting resistance, so there is rarely any motivation on their part to negotiate in good faith or settle a case.

Considering their limited options to obtain legal representation, some owners believe they can take on the matter *pro se* (representing themselves). There are a few individuals who have managed to do this successfully – often those with some legal background – but there have been precious few over the past several decades.

Before even contemplating a suit above the user-friendly small claims level (which has extremely limited jurisdiction and is best suited to minimal monetary issues), you should go to New Jersey Courts (NJCourts.gov). There you can start by reading through the court rules. Even if lay people can understand them, or the substantive law (statutes, regulations and case law) for that matter, they are facing a well-financed firm with educated, licensed people who do such things for a living.

Not only will you have to meet stringent procedural requirements, you must be prepared to deal with motions (requiring supporting briefs) and the many perils inherent in discovery.

If you are able to successfully navigate those preliminary hurdles, the most difficult one awaits – the trial. That requires completing pretrial papers and having a working knowledge of complex rules of evidence. Anyone who has ever watched lay people in municipal court has noticed it is a rare for them to ask a question of the officer or another witness. Typically, the person having the opportunity to question a witness begins to testify. At best, they ask objectionable leading questions. And that's at the most basic level of court. Regrettably, most get their "knowledge" of law and court proceedings from TV shows. Even watching actual court proceeding, while possibly helpful, is woefully insufficient, starting with not knowing the law and rules applicable in that jurisdiction.

Continued on next page…

You could read a book on performing an appendectomy but, even with access to an operating room, would you feel confident cutting open a beloved family member?

So, what is the answer? Simple, it's having access to attorneys who feel confident in expending adequate resources and getting paid their full fee, requiring deep pockets. A partial solution is giving owners the statutory right to counsel fees as people do in civil rights and consumer fraud cases. The only way for that to happen is for the Legislature to recognize that this right is essential for association owners to have a fair chance at justice. This is why C-IHC supports owners being given a right to counsel fees. Once there is a bill requiring this, C-IHC will let you know and direct you to contact your legislators to support this essential protection!

New Jersey Legislature: Legislation to Watch Fall 2025

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
If there is no designation, C-IHC has not taken a position on the legislation

A476 Assm. Danielson/Wimberly
C-IHC = Q
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 Assm. McGuckin/Kanitra; Sen. Holzaphel
Requires installation of emergency power supply systems to certain common areas of new planned real estate developments; provides related tax incentives.

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: 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 multiunit complexes to allow service of process.

A1367 **Asm. Marenco**
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, Reyolds-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.

A4779 **Sauickie, Alex**
C-IHC = Y
Provides gross income tax credits for portion of homeowners' association payments used to fund infrastructure improvements within common interest communities.

A5016/ S3852 **Assm. Kanitra and McGuckin; Senators Hozafel and Amato**
C-IHC = Q
Modifies requirements for associations to protect structural integrity of certain buildings; expands timeframes for associations to establish adequate reserves.

A5174 **Asw Lopez**
C-IHC = Y
Modifies capital reserve funding requirements for planned real estate developments in certain circumstances.

A5631 **Asw. Ramirez**
C-IHC = Q
Includes residential condominiums or cooperative buildings with four or fewer dwelling units in definition of excluded structure for purpose of certain structural integrity-related inspections.

A5844/S3992 **Sen. Singleton/ Asw Lopez, Asw McCoy, Asm. Stanley**
C-IHC = Q
Modifies capital reserve funding requirements for certain planned real estate developments.

A5744 **Asw. Ramirez**
C-IHC = Q
Limits increase in association dues for unit owners in association of planned real estate development to 10 percent under certain circumstances.

S503 **Sen. Holzaphel C-IHC = Q**
Requires installation of emergency power supply systems to certain common areas of new planned real estate developments; provides related tax incentives.

S686 **Sen. Singer 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).

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.

S2907 **Sen. Greenstein C-IHC = Y**
Concerns installation and maintenance of solar panels in common interest communities.

S4130 **Sen. Mukherji C-IHC = Q**
Concerns inspection information distribution; provides DCA and property management entities with certain responsibility to provide and maintain contact information for owners of residential rental property and planned real estate development associations.

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