



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

Dear Homeowner:

You recently requested assistance regarding your association. The Association Regulation Unit in the Department of Community Affairs enforces provisions of the New Jersey Condominium Act and the Planned Real Estate Development Full Disclosure Act pertaining to the obligations of an association comprised of residential owners in the following three areas: that associations adopt and properly administer alternate dispute resolution procedures (ADR); comply with open meeting requirements; and provide owners access to financial records at reasonable times. Included with this letter are information sheets outlining these provisions.

Please note that the Department of Community Affairs does not have the statutory authority to take actions such as investigating alleged wrongdoings of board members or employees, removing board members from office, ordering board members or employees to comply with governing documents or to take or rescind specific actions. Similarly, we cannot order revisions to financial practices or operating procedures, conduct audits or review elections. Owners are empowered to correct such matters through ADR or litigation as well as by petitioning the board or electing new board members.

If you wish to make a formal complaint that your association is not in compliance with its obligations as described in this material, please complete the enclosed Common Interest Community Association Complaint form and return it, along with the appropriate supporting documentation, to the address on the complaint form.

We trust the information supplied will guide you accordingly.

Association Regulation Unit
Planned Real Estate Development

Enclosures



ALTERNATIVE DISPUTE RESOLUTION

Both the New Jersey Condominium Act, N.J.S.A. 46:8B-1 et seq., and the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq., require associations to provide a “fair and efficient” alternative to litigation for unit owners to resolve disputes between one another or with the association. The Condominium Act requires condominium associations to provide written notice of the availability of ADR as a condition of issuing a fine (N.J.S.A. 46:8B-15f.).

New Jersey courts have found that the requirements of the Planned Real Estate Development Full Disclosure Act that apply to ADR are intended to apply retroactively to all common interest communities regardless of when the community was created and the courts have also found that in the absence of a specific enunciation of public policy, that the provisions of the Condominium Act can be applied to common interest communities that are not condominiums. See, for example, Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association 192 NJ 344, 929 A2D 1060; Mulligan v. Panther Valley 337 NJ Super 293, 766 A2d 1186; and Moore v. Radburn 2010 NJ Super upub Lexis 561. Therefore, the Department recommends that all common interest communities adopt as part of their ADR policy the provision of notice to a unit owner as a condition of issuing a fine.

The Association Regulation Unit of the New Jersey Department of Community Affairs has authority to require common interest communities to adopt alternate dispute resolution procedures. The agency does not provide ADR and does not address the substance of the dispute.

Although broadly construed, ADR has been found by New Jersey courts to be inapplicable to actions that challenge the board’s right to exercise certain powers or actions which are intended to serve the good of the association as a whole. A simple test of whether the dispute is ripe for ADR is whether an owner can assert that the association’s action imposes a special harm on the individual as opposed to affecting all owners. If this occurs ADR is applicable. Any allegations of fraud or other criminal conduct should be directed to the attention of the county prosecutor or other appropriate law enforcement agency for guidance. Please note that the State Attorney General does not act on individual complaints regarding allegations of board misconduct.

The applicability of ADR to a specific complaint requires a determination of whether it relates to a discretionary board action by the board or the management of the association or constitutes a violation of the association’s governing documents such as the master deed, bylaws or rules. Matters in which boards properly exercise discretion are subject to review through the democratic process (petitions, elections, etc.) while violations of governing documents or other legal requirements justify the use of the ADR procedure. Thus, if you proceed to ADR, you should be prepared to refer to specific laws or portions of the governing documents which you believe were violated.

There is no formal process required to request ADR but you should make it in writing, to the board, unless the procedure of your association provides otherwise. You should do so even if your association does not have a specific written ADR procedure or has one which does not appear to satisfy the “fair and efficient” criteria. In your request, state your complaint clearly and specifically request that you be provided ADR. If you do not have a copy of your association’s ADR procedure, you should request that the board or its agent supply you with one.

The laws we enforce do not prescribe the amount of time you should wait to expect a response from the board regarding your request to participate in an ADR. We recommend you wait a reasonable amount of time (at least 14 days) for a response from the board. If you do not receive a response you may contact this office in writing by completing a common interest community association complaint form. Please note, we do not require that associations file their ADR procedures with us and there is no requirement to receive Department approval before instituting a procedure.

Each association is authorized to design the ADR procedure which it feels best satisfies the needs of its owners. Procedures may range from mediation (informal recommendations) rendered by designated neighbors to non-binding arbitration (formal decisions) in a court like setting with numerous formalities overseen by a trained individual. ADR providers may be appointed by a board but the association should have an independent means of selection. Whoever is selected must be impartial.

ADR is intended as an alternative to litigation, thus it is not necessary to have legal counsel. However, you may, if you choose, be represented. If you choose to be represented, you are responsible for the cost of the representation. Otherwise, in condominiums, any costs in providing ADR are common expenses pursuant to N.J.S.A. 46:8B-14. In other types of associations, there may be mandatory charges on the requesting party to cover the costs of ADR.

Although there is no standard ADR procedure, there is one fundamental rule; the board cannot be the ADR provider. Thus, neither the board nor any member can sit as or with the ADR panel. The board or its members or agent or representative can appear and present the board's position. The law provides that either party may appeal to court following an ADR procedure. The board cannot appeal a decision to itself. The Department of Community Affairs is not empowered to overturn or even modify the outcome of an ADR proceeding.

Please note that ADR is not automatically binding on boards. Thus, if a board fails to cooperate with a recommendation or arbitration decision against it, you must enforce your right in court. Additionally, ADR is not a means to secure an order to stop a board from taking action or to force a board to act. These can only be secured through appropriate court proceedings. Moreover, ADR is not the means to obtain monetary damages against the association.

The Planned Real Estate Development Full Disclosure Act and the New Jersey Condominium Act are both available on line at www.njleg.state.nj.us (to obtain statute, scroll down on left side of page to "Laws and Constitution", click on statutes, enter full name of statute in search box). The N.J. Administrative Code can also be found on line at www.michie.com/NJ.

OPEN MEETINGS

All meetings at which a board takes a binding vote are required by law to be open to all owners and advance notice of such meetings must be given as provided by law. The laws governing open meeting requirements in New Jersey's common interest communities can be found in the Planned Real Estate Development Full Disclosure Act (N.J.S.A. 45:22A-46a.) and the New Jersey Condominium Act (N.J.S.A. 46:8B-13(a)). The New Jersey Department of Community Affairs has promulgated regulations to assist in the implementation of these statutory requirements in Chapter 20 of Title 5 of the N.J. Administrative Code (N.J.A.C. 5:20-1.1 *et seq.*).

Advance notice, as prescribed by N.J.A.C. 5:20-1.2(b) means written notice, at least 48 hours in advance, giving the time, date, location, and to the extent known, the agenda of the meeting. The notice shall be posted prominently in at least one place on the property that is accessible at all times to all unit owners and must be filed with the person responsible for administering the business office of the association. In addition, it is to be mailed, telephoned, or hand delivered to at least two newspapers that have been designated by the governing board or by the association to receive such notices. Condominium association by-laws may prescribe additional or alternative methods of providing notice, which provide an equal or greater prospect that unit owners will receive it. Mailings directly to owners, for example, are permitted, as is hand delivering a copy to each unit door.

There is no law that specifies how often meetings must be held except that the adoption of an annual budget and the certification of any elections must be performed at meetings open to the unit owners. However, the Planned Real Estate Development Full Disclosure Act requires that meetings must be held whenever the board is going to take a binding action. The association's by-laws shall include the method of calling meetings of unit owners, the percentage of unit owners or voting rights required to make decisions and to constitute a quorum (N.J.S.A. 45:22A-46b.) It is important to note that an annual meeting of the association is distinguishable from an open meeting. The purpose of an annual meeting is to discuss association business as opposed to board related issues at an open meeting.

Minutes of open meetings must be taken and copies made available to unit owners prior to the next open meeting. Associations are not obligated to mail minutes to owners. It is satisfactory if the minutes are available at the next meeting. Refer to your association's policy on copying costs if requesting the adopted minutes of past meetings. However, the cost of making the last meeting's minutes available to all unit owners prior to the next open meeting is a common expense to be proportionally borne by all unit owners

Open Meeting requirements regarding board meetings (as opposed to general membership meetings) do not guarantee a right to participate, only to observe. Participation is at the board's discretion. Moreover, the board may legitimately exclude or restrict attendance at meetings dealing with certain matters, such as litigation, personnel actions, or any matter the disclosure of which would constitute an unwarranted invasion of individual privacy. However, even though certain matters may be discussed in a closed session, any binding votes on the matter must be taken at an open meeting.

Both the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq., and the New Jersey Condominium Act, N.J.S.A. 46:8B-1 et seq., require that the association's by-laws include provisions for open meetings. The Association Regulation Unit of the New Jersey Department of Community Affairs has the authority to ensure that associations comply with the open meeting requirements of these laws including the adoption of the provision as an amendment to the association's by-laws. However, even if the open meeting requirements have not been formally adopted by an association, the law requires associations to comply with them.

If you are aggrieved by the fact that your association is not adhering to the open meeting requirements of the law, please submit the enclosed "Common Interest Community Association Complaint Form" along with the necessary supporting documentation, to the address listed on the form.

The Planned Real Estate Development Full Disclosure Act and the New Jersey Condominium Act are both available on line at www.njleg.state.nj.us. The N.J. Administrative Code can also be found on line at www.michie.com/NJ.

ACCESS TO FINANCIAL RECORDS

The New Jersey Condominium Act, N.J.S.A. 46:8B-14(g), states that the association, acting through its officers or governing board, shall be responsible for “the maintenance of accounting records in accordance with generally accepted accounting principles, open to inspection by unit owners at reasonable times”. These accounting records shall include (1) a record of all receipts and expenditures; and (2) an account for each unit setting forth any shares of common expenses or other charges due, the due dates thereof, the present balance due, and any interest in common surplus.

In accordance with N.J.S.A. 46:8B-16(d) of the New Jersey Condominium Act, a unit owner may notify the Department of Community Affairs, upon the failure of an association, to comply with the requirements set forth in N.J.S.A. 46:8B-14 (the right of inspection of accounting records maintained by the association). If the association fails to comply, the Department has the power to order compliance.

The New Jersey Appellate Court has held that the above referenced provisions of the Condominium Act apply to all Planned Real Estate Developments including cooperatives and homeowners associations as enunciation of public policy in applying the general welfare clause of the Planned Real Estate Full Disclosure Act (N.J.S.A. 45:22A-44b). Based on the Court's decision, planned real estate developments in New Jersey must provide homeowners residing in a planned real estate development community with access to the association's accounting records in accordance with the New Jersey Condominium Act.

Please note that the Condominium Act does not specify that a homeowner has the right to make copies of accounting records. If the governing documents of your association or cooperative allow for copying, and the board does not adhere to the procedures set forth in these documents, you should request alternate dispute resolution. In making a request to inspect records, it is best to do so in accordance with the governing documents. The request should be set forth in writing with the understanding that there may be certain restrictions as to the time and location of where the records may be reviewed. If the governing documents are not specific as to whom the records request should be made, address the request to your governing board.

If you have been denied access to accounting records by your association, please submit the enclosed complaint form, along with the appropriate supporting documentation to the address supplied on the form. In accordance with the Condominium Act, the Department has the authority under N.J.S.A. 46:8B-16(d) to issue an order to compel the association to provide access to these financial records.

The Planned Real Estate Development Full Disclosure Act and the New Jersey Condominium Act are both available on line at www.njleg.state.nj.us.

Common Interest Community Association Complaint Form

Part One

Be sure to read the accompanying handouts regarding the agency's jurisdiction prior to completing this form.

This form has two parts, both parts must be submitted in accordance with the instructions or the complaint will not be processed.

Complainant Information

My name is _____

I am filing a complaint on behalf of _____
(unit owner name as it appears on association records)

Who owns unit _____ within the _____
(unit designation) (name of development, condominium or cooperative)

My relationship to the complainant is _____

My mailing address is _____

(city) (state) (zip)

Contact me during the day at this telephone number _____ or by email at _____

Signed by _____ on this date ____/____/____
(signature of unit owner)

Association Information

The association is (check one) ___ a condominium ___ a cooperative ___ a homeowners association

The name of the association is _____ There are ____ # of residential units within the development. This association is part of a master association called _____ (if there is no master enter N/A)

The development is located in _____ Town/City of _____ County

The mailing address of the association is _____

(street address and/or PO Box)

(city) (state) (zip)

The current president of the association is _____

Unit owners elect _____ (#) of the members of the board of directors which has a total of _____ (#) board members.

The association has employed _____ as the manager of the property.
(name of person and company name if applicable)

The property manager can be contacted at this telephone number _____

Common Interest Community Association Complaint Form
Part Two

Nature of Complaint

Please check those that apply without modification

_____ **The Association does not have an Alternative Dispute Resolution (ADR) procedure**

Prior to filing a complaint, did you request a copy of the ADR procedure in writing? Were you informed the procedures did not exist? Was your request ignored? If the answer to the first question is yes, and you were either advised that there is no procedure or your request was ignored, include a copy of your written request for a copy of the ADR procedure and any written response.

_____ **Denied access to ADR**

Prior to filing a complaint, did you request ADR in writing in accordance with the procedure adopted by your association or in the absence of a procedure did you request ADR by writing directly to the board? Was your request ignored or denied? If yes, include a copy of your written request for ADR and any written response.

_____ **Denied access to accounting/financial records**

Prior to filing a complaint, did you request to review the records in writing? Was your request denied or ignored? Was your request specific as to records requested? If yes, include a copy of your written request to review the financial records and any written response.

_____ **Minutes not provided from open meeting**

Prior to filing a complaint, did you request the minutes in writing? Was your request denied or ignored? If yes, include a copy of your written request for a copy of the minutes and any written response.

_____ **Appropriate notice for open meeting not given**

Prior to filing a complaint, did you check with the association office to verify it had a copy of the notice? Did you make a written request to the board for a copy of the notice of the meeting you believe was not appropriately advertised? If yes, describe the circumstances which make you believe notice was not provided. Include a copy of your request for a copy of the notice of the open meeting and any written response.

_____ **Binding vote taken without the benefit of an open meeting.**

Prior to filing a complaint, did you request a copy of the meeting minutes at which the binding vote should have been taken? If yes, describe the nature of the binding vote. Include a copy of your request for a copy of the minutes at which you believe the binding vote should have been taken and any written response.

Instructions

Include a brief explanation of each item checked along with a description of each document attached on a separate sheet of paper. The explanation should be no more than three or four paragraphs. Upon the initial filing of a complaint do not include more documentation than is necessary to establish jurisdiction. Do include copies of your letters to the board/association regarding ADR, financial records access, requests for minutes of open meetings, or a copy of the notice of the open meeting. Do not include copies of budgets, master deeds, by-laws, court decisions, newspaper articles, work orders, site plans, estimates, pictures, annual reports, and so on. Agency staff can not sift through voluminous documents to determine if there is a cause of action and may return the complaint package if the complaint is not filed in accordance with these instructions.

Mail your completed complaint form to

Association Regulation Unit
New Jersey Department of Community Affairs
PO Box 805
Trenton, New Jersey 08625-0805

For additional information or to download complaint forms and copies of the handouts concerning ADR, open meetings and access to financial records, in unit owner controlled associations, visit the website at <http://www.nj.gov/dca/divisions/codes/offices/ari.html>