

## N.J. Stat. § 45:22A-1

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

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### **§ 45:22A-1. Short title [Retirement Community Full Disclosure Act]**

This act may be cited as the "Retirement Community Full Disclosure Act."

#### **History**

L. 1969, c. 215, 1.

Annotations

#### **LexisNexis® Notes**

#### **Research References & Practice Aids**

##### **Cross References:**

Definitions; disclosure statements to senior citizen housing residents, see [2A:42-113](#).

Definitions, see [2A:42-84.1](#).

Retirement subdivision or community; application of this act, see [45:22A-41](#).

Inapplicability of act to planned developments at certain stage of progress on effective date, see [45:22A-42](#).

Corporations exempt, see [54:10A-3](#).

Definitions, see [55:13A-3](#).

Retirement community; exclusion from definition of multiple dwelling; compliance with fire safety standards; self-inspection; filing checklist; certification; failure to comply; notice, see [55:13A-13.1](#).

Discrimination; prohibition; violations; penalty, see [55:14K-44](#).

##### **Administrative Code:**

[N.J.A.C. 18:7-1.12](#) (2013), CHAPTER CORPORATION BUSINESS TAX ACT, Exempt corporations.

N.J.A.C. 5:26-1.3 (2013), CHAPTER PLANNED REAL ESTATE DEVELOPMENT FULL DISCLOSURE ACT REGULATIONS, Definitions.

N.J.A.C. 5:26-11.7 (2013), CHAPTER PLANNED REAL ESTATE DEVELOPMENT FULL DISCLOSURE ACT REGULATIONS, Applicability.

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## **N.J. Stat. § 45:22A-2**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

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### **§ 45:22A-2. Definitions**

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For the purposes of this act, the term:

- (a)** "Retirement subdivision" or "subdivision" means any land which is divided or proposed to be divided into 10 or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan where such subdivision is advertised or represented as a retirement subdivision or as a subdivision primarily for retirees or elderly persons, or where there is a minimum age limit tending to attract persons who are nearing retirement age;
- (b)** "Retirement community" or "community" means any complex or proposed complex of more than 10 units, whether contained in one or more buildings or whether constructed on separate lots, offered for sale or lease as part of a common promotional plan where such community is advertised or represented as a retirement community or as a community primarily for retirees or elderly persons, or where there is a minimum age limit tending to attract persons who are nearing retirement age;
- (c)** "Unit" means any apartment or structure intended primarily as a residence and consisting of one or more rooms occupying all or part of a floor or floors in a building of one or more floors or stories, including a single residence dwelling and a share or membership interest of a cooperative housing corporation or association which entitles the holder thereof to possess and occupy for dwelling purposes a house, apartment or other structure owned or leased by said corporation or association, or to lease or purchase a dwelling constructed or to be constructed by said corporation or association;
- (d)** "Common promotional plan" includes an offer for sale or lease of lots or units in a subdivision or community by a single developer, or a group of developers acting in concert where such lots or units are contiguous, or are known, designated, or advertised as a common entity or by a common name;
- (e)** "Person" means an individual, or any unincorporated organization, partnership, association, corporation, trust, or estate;
- (f)** "Developer" means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a retirement subdivision or any units in a retirement community;
- (g)** "Agent" means any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a retirement subdivision or any units in a retirement community; but shall not include an attorney-at-law whose representation of another person consists solely of rendering legal services;
- (h)** "State" means the State of New Jersey;
- (i)** "Purchaser" means an actual or prospective purchaser or lessee of any lot or unit in a subdivision or community;
- (j)** "Offer" includes any inducement, solicitation, or attempt to encourage a person to acquire a lot or unit in a subdivision or community;
- (k)** "Disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision or community.

## History

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L. 1969, c. 215, 2; Amended by L. 1975, c. 335, 1, eff. March 3, 1976.

Annotations

## LexisNexis® Notes

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### Case Notes

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#### **Governments: Legislation: Interpretation**

#### **Governments: State & Territorial Governments: Licenses**

#### **Governments: Legislation: Interpretation**

Statement of purpose of the Retirement Community Full Disclosure Act itself, N.J. Stat. Ann. § [45:22A-1](#) et seq., and the regulations are all geared to the conventional apartment lease and subdivision lot sale and not at all to the unique features of lifetime care contracts. [American Nat'l Bank & Trust v. Presbyterian Homes of New Jersey, 148 N.J. Super. 465, 372 A.2d 1147, 1977 N.J. Super. LEXIS 814 \(App.Div. 1977\)](#).

Legislature had a conventional sale or lease of property in mind when it enacted the Retirement Community Full Disclosure Act, N.J. Stat. Ann. § [45:22A-1](#) et seq., and therefore the Act did not apply to residence agreement that had characteristics of a licensing agreement instead of a lease agreement. [American Nat'l Bank & Trust v. Presbyterian Homes of New Jersey, 148 N.J. Super. 465, 372 A.2d 1147, 1977 N.J. Super. LEXIS 814 \(App.Div. 1977\)](#).

#### **Governments: State & Territorial Governments: Licenses**

Statement of purpose of the Retirement Community Full Disclosure Act itself, N.J. Stat. Ann. § [45:22A-1](#) et seq., and the regulations are all geared to the conventional apartment lease and subdivision lot sale and not at all to the unique features of lifetime care contracts. [American Nat'l Bank & Trust v. Presbyterian Homes of New Jersey, 148 N.J. Super. 465, 372 A.2d 1147, 1977 N.J. Super. LEXIS 814 \(App.Div. 1977\)](#).

## N.J. Stat. § 45:22A-3

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

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### **§ 45:22A-3. Administration of act**

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This act shall be administered by the Division of Housing and Urban Renewal, State Department of Community Affairs, which hereinafter is called the agency.

#### **History**

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L. 1969, c. 215, 3.

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## **N.J. Stat. § 45:22A-4**

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### **§ 45:22A-4. Application of act; exemptions**

Unless the method of disposition is adopted for the purpose of evasion of this act, the provisions of this act do not apply to offers or dispositions of an interest in land by a purchaser of subdivided lands for his own account in a single or isolated transaction; nor shall the provisions of this act apply to the following:

- (a)** Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;
- (b)** Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any State or Federal Statute;
- (c)** The sale or lease of real estate under or pursuant to court order;
- (d)** A subdivision as to which the agency has granted an exemption as provided in section 11.
- (e)** Deleted by amendment.

### **History**

L. 1969, c. 215, 4; Amended by L. 1975, c. 335, 2, eff. March 3, 1976.

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## N.J. Stat. § 45:22A-5

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### § 45:22A-5. Necessity of registration; public offering statement

Unless the retirement subdivisions or community lands or the transaction is exempt by section 4:

- (a) No person may offer or dispose of any lot or unit in any retirement subdivision or community located in this State, nor offer or dispose in this State of any lot or unit in any retirement subdivision or community located without this State prior to the time such division or community is registered in the manner prescribed by this act;
- (b) No person may dispose of any lot or unit in any retirement subdivision or community unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity, under no circumstances less than 48 hours, to examine the public offering statement prior to the disposition.

### History

L. 1969, c. 215, 5.

Annotations

### LexisNexis® Notes

### Case Notes

#### **Contracts Law: Remedies: Rescission & Redhibition: General Overview**

Notice did not advise the resident of any of his substantive rights; it was only when the prospectus was received that the resident was apprised of his rights and obligations, and at that time the resident had not only the right to void his contract within three full business days, but only then could he determine if there were any material misstatements or omissions pursuant to N.J. Stat. Ann. § [45:22A-5\(b\)](#). *American Nat'l Bank & Trust v. Presbyterian Homes of New Jersey*, 148 N.J. Super. 465, 372 A.2d 1147, 1977 N.J. Super. LEXIS 814 (App.Div. 1977).

## N.J. Stat. § 45:22A-6

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

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### **§ 45:22A-6. Registration; filing; contents; fee**

(a) A retirement subdivision or community may be registered by filing with the agency, a statement of record containing the following documents and information:

- (1) An irrevocable appointment of the agency to receive service of any lawful process in any noncriminal proceeding arising under this act against the developer or his agent;
- (2) A legal description of the lands offered for registration as a retirement subdivision or community, together with a map showing the subdivision proposed or made, and the dimensions of the lots, parcels, units or interests and the relation of such lands to existing streets, roads, and other improvements;
- (3) The States or jurisdictions, including the Federal Government, in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the subdivision or community lands by the regulatory authorities in each jurisdiction or by any court;
- (4) The applicant's name, address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this State;
- (5) The name, address, and principal occupation for the past 5 years of every director and officer of the applicant or person occupying a similar status, performing similar functions or having an interest in the subdivision or community lands; the extent and nature of his interest in the applicant or the subdivision or community lands as of a specified date within 30 days of the filing of the application;
- (6) A statement, in a form acceptable to the agency, of the condition of the title to the subdivision or community lands including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the agency;
- (7) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivision or community lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;
- (8) Copies of the instruments by which the interest in the subdivision or community lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;
- (9) If there is a lien or encumbrance affecting more than one lot, parcel, unit or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;
- (10) Copies of instruments creating easements, restrictions, or other encumbrances, affecting the subdivision or community lands;

- (11) A statement of the zoning and other governmental regulations affecting the use of the subdivision or community lands and also of any existing tax and existing or proposed special taxes or assessments which affect such lands;
- (12) A statement of the existing provisions for access, sewage disposal, water, and other public utilities in the subdivision or community; a statement of the improvements to be installed, the schedule for their completion, and a statement as to the provisions for improvement maintenance;
- (13) A narrative description of the promotional plan for the disposition of the subdivision or community lands together with copies of all advertising material which has been prepared for public distribution by and means of communication;
- (14) Written assurances that the lands will be offered to the public and that responses to applications will be made without regard to race, creed, or national origin;
- (15) The proposed public offering statement;
- (16) A current financial statement, which shall include such information concerning the developer as the agency deems to be pertinent, including, but not restricted to, a profit and loss statement certified by an independent public accountant and information concerning any adjudication of bankruptcy against the developer or any principal owning more than 10% of the interests in the subdivision or community at the time of filing;
- (17) Any other information which the agency by its rules requires for the protection of purchasers.

- (b) At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the agency a fee, not in excess of \$25.00, in accordance with a schedule to be fixed by the regulations of the agency, which fees may be used by the agency to defray part of the cost of rendering services under this act.
- (c) The filing with the agency of a statement of record, or of an amendment thereto, shall be deemed to have taken place upon the receipt thereof, accompanied by payment of the fee required by subsection (b).
- (d) The information contained in or filed with any statement of record shall be made available to the public under such regulations as the agency may prescribe and copies thereof shall be furnished to every applicant at such reasonable charge as the agency may prescribe.
- (e) If the developer registers additional subdivision or community lands, he may consolidate the subsequent registration with any earlier registration offering such lands for disposition under the same promotional plan.
- (f) The developer shall immediately report any material changes in the information contained in a statement of record.

## History

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L. 1969, c. 215, 6

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## N.J. Stat. § 45:22A-7

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### **§ 45:22A-7. Public offering statement; form and contents**

**(a)** A public offering statement shall disclose fully and accurately the physical characteristics of the retirement subdivision or community lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting such lands. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and shall include the following:

- (1)** The name and principal address of the developer;
- (2)** A general description of the subdivision or community lands stating the total number of lots, parcels, units, or interests in the offering;
- (3)** The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting such lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect such lands;
- (4)** A statement of the use for which the property is offered;
- (5)** Information concerning improvements, including hospitals, health and recreational facilities of any kind, streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities, and the estimated cost, date of completion and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in the subdivision or community lands;
- (6)** Additional information required by the agency to assure full and fair disclosure to prospective purchasers.

**(b)** The public offering statement shall not be used for any promotional purposes before registration of the retirement subdivision or community lands and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the subdivision lands or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires or permits it.

**(c)** The agency may require the developer to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision or community may be made after registration without notifying the agency and without making an appropriate amendment to the public offering statement. A public offering statement is not current unless all amendments are incorporated.

### **History**

L. 1969, c. 215, 7.

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## N.J. Stat. § 45:22A-8

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### **§ 45:22A-8. Determinations by agency upon receipt of statement of record**

Upon receipt of a statement of record in proper form, the agency shall forthwith initiate an examination to determine that:

- (a) The developer can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust or other safeguards have been provided;
- (b) There is reasonable assurance that all proposed improvements will be completed as represented;
- (c) The advertising material and the general promotional plan are not false, misleading, or discriminatory and comply with the standards prescribed by the agency in its rules and afford full and fair disclosure;
- (d) Such subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this State, the United States, or any other State or foreign country and has not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions;
- (e) The public offering statement requirements of this act have been satisfied.

### **History**

L. 1969, c. 215, 8.

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## N.J. Stat. § 45:22A-9

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### § 45:22A-9. Notice of filing; approval or rejection of registration

- (a) Upon filing of the statement of record in proper form, the agency shall issue a notice of filing to the applicant. Within 10 days from the date of the notice of filing, the agency shall enter an order registering the subdivision or community lands or rejecting the registration. If no order of rejection is entered within 90 days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay.
- (b) If the agency affirmatively determines, upon inquiry and examination, that the requirements of section 8 have been met, it shall enter an order registering the retirement subdivision or community lands and shall designate the form of the public offering statement.
- (c) If the agency determines upon inquiry and examination that any of the requirements of section 8 have not been met, the agency shall notify the applicant that the statement of record must be corrected in the particulars specified within 30 days. If the requirements are not met within the time allowed the agency shall enter an order rejecting the registration containing the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days during which time the applicant may petition for reconsideration and shall be entitled to a hearing upon request.

### History

L. 1969, c. 215, 9.

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## N.J. Stat. § 45:22A-10

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### **§ 45:22A-10. Annual report**

- (a)** Within 30 days after each annual anniversary date of an order registering senior citizens' subdivided lands, the subdivider of such lands shall file a report in the form prescribed by the rules of the agency. The report shall reflect any material changes in information contained in the original statement of record.
- (b)** The agency at its option may permit the filing of annual reports within 30 days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

### **History**

L. 1969, c. 215, 10.

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## N.J. Stat. § 45:22A-11

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### **§ 45:22A-11. Rules and regulations; injunctions of actual or potential violations; intervention in actions; powers**

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- (a)** The agency shall adopt, amend, or repeal such rules and regulations as are reasonably necessary for the enforcement of the provisions of this act, after a public hearing with notice thereof published once in a newspaper or newspapers with Statewide circulation not less than 5 days nor more than 15 days prior to the hearing and mailed to developers not less than 5 days nor more than 15 days prior to the public hearing. The Director of the Division on Aging, State Department of Community Affairs, shall advise the director of the agency concerning the promulgation or alteration of such rules. The rules shall include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the statement of record and advertising will be completed and that purchasers will receive the interest in land contracted for; provisions for operating procedures; rules of procedure to be followed in the conduct of all hearings; and other rules as are necessary and proper to effect the purpose of this act.
- (b)** The agency by rule or by an order, after reasonable notice to all developers covered by this act and a hearing, may require the filing of advertising material relating to retirement subdivision and community lands prior to its distribution.
- (c)** If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this act, or a rule or order hereunder, the agency, with or without prior administrative proceedings, may bring an action in the Chancery Division of the State Superior Court to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver may be appointed. The agency is not required to post a bond in any court proceedings.
- (d)** The agency may intervene in a suit involving subdivisions or community lands covered by this act. In such suit, the developer shall promptly furnish the agency notice of the suit and copies of all pleadings.
- (e)** The agency may:
  - (1)** Accept registrations filed in other states or with the Federal Government, or with the Bureau of Securities, within the Division of Consumer Affairs, Department of Law and Public Safety;
  - (2)** Grant exemptions if allowed by rules promulgated under subsection (a);
  - (3)** Contract with similar agencies in this State or other jurisdictions to perform investigative functions;
  - (4)** Accept grants in aid from any source.
- (f)** The agency shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures, statements of record and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

### **History**

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L. 1969, c. 215, 11; Amended by L. 1975, c. 335, 3, eff. March 3, 1976.

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## N.J. Stat. § 45:22A-12

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### **§ 45:22A-12. Investigation of violations**

**(a)** The agency may:

- (1)** Make necessary public or private investigations within or outside of this State to determine whether any person has violated or is about to violate this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder;
- (2)** Require or permit any person to file a statement in writing, under oath or otherwise as the agency determines, as to all the facts and circumstances concerning the matter to be investigated.

**(b)** For the purpose of any investigation or proceeding under this act, the agency or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

**(c)** Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the agency may apply to Chancery Division of the State Superior Court for an order compelling compliance.

### **History**

L. 1969, c. 215, 12.

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## N.J. Stat. § 45:22A-13

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### **§ 45:22A-13. Cease and desist orders; affirmative action**

**(a)** If the agency determines after notice and hearing that a person has:

- (1)** Violated any provision of this act;
- (2)** Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in the subdivision or community lands;
- (3)** Made any substantial change in the plan of disposition and development of the subdivision or community lands subsequent to the order of registration without obtaining prior written approval from the agency;
- (4)** Disposed of any subdivision or community lands which have not been registered with the agency;
- (5)** Violated any lawful order or rule of the agency, it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the agency will carry out the purposes of this act.

**(b)** If the agency makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing a temporary cease and desist order, the agency whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the developer or his agent. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within 30 days at a place chosen by the agency to determine whether or not it becomes permanent.

### **History**

L. 1969, c. 215, 13.

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## N.J. Stat. § 45:22A-14

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### **§ 45:22A-14. Revocation of registration; grounds; cease and desist order in lieu of revocation**

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**(a)** A registration may be revoked after notice and hearing upon a written finding of fact that the developer has:

- (1)** Failed to comply with the terms of a cease and desist order;
- (2)** Been convicted in any court subsequent to the filing of the statement of record for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;
- (3)** Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of retirement subdivision or community purchasers;
- (4)** Failed faithfully to perform any stipulation or agreement made with the agency as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement;
- (5)** Advertised his lands or responded to applications for his lands in a manner which was discriminatory on the basis of race, creed, or national origin;
- (6)** Made intentional misrepresentations or concealed material facts in a statement of record filed for registration. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

**(b)** If the agency finds after notice and hearing that the developer has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

### **History**

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L. 1969, c. 215, 14.

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## N.J. Stat. § 45:22A-15

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-15. Penalties for violations**

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Any person who willfully violates any provision of this act or of a rule adopted under it or any person who willfully, in a statement of record filed for registration makes any untrue statement of a material fact or omits to state a material fact shall be fined not less than \$250.00 or double the amount of gain from the transaction, whichever is the larger but not more than \$50,000.00; or he may be imprisoned for not more than 1 year; or both.

### **History**

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L. 1969, c. 215, 15.

Annotations

### **LexisNexis® Notes**

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### **Case Notes**

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#### **Governments: Public Improvements: Community Redevelopment**

N.J. Stat. Ann. § [45:22A-15](#) imposes purely criminal sanctions and, accordingly, the director of the Division of Housing and Urban Renewal does not have the power to impose them; rather, such authority reposes exclusively in courts of law and consequently, it was beyond the director's jurisdiction to impose any penalty under the provisions of N.J. Stat. Ann. § [45:22A-15. Department of Community Affairs v. Hovsons, Inc., 146 N.J. Super. 343, 369 A.2d 977, 1977 N.J. Super. LEXIS 734 \(App.Div. 1977\)](#).

## **N.J. Stat. § 45:22A-16**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-16. Liability to purchaser; remedies of purchaser; liability of persons other than developers**

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- (a)** Any person who disposes of retirement subdivision or community lands in violation of section 5, or who in disposing of such lands covered by this act makes an untrue statement of a material fact, or who in disposing of such lands omits a material fact required to be stated in a statement of record or public offering statement or necessary to make the statements made not misleading, is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care could not have known of the untruth or omission, or that the purchaser did not rely on the untruth or omission.
- (b)** In addition to any other remedies, the purchaser, under the preceding subsection, may recover the consideration paid for the lot, parcel, unit or interest in senior citizens' subdivided lands together with interest at the rate of 6% per year from the date of payment, property taxes paid, costs, and reasonable attorneys fees less the amount of any income received from such subdivided lands upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit or interest in the subdivision or community lands, he may recover the amount that would be recoverable upon a tender of a reconveyance less the market value of the land or property when disposed of and less interest at the rate of 6% per year on that amount from the date of disposition.
- (c)** Every person who directly or indirectly controls a retirement subdivision or community liable under Subsection (a), every general partner, officer, or director of a developer, every person occupying a similar status or performing a similar function, every employee of the developer who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as such developer, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.
- (d)** Every person whose occupation gives authority to a statement which with his consent has been used in a statement of record or public offering statement, if he is not otherwise associated with the developer and development plan in a material way, is liable only for false statements and omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.
- (e)** A tender or reconveyance may be made at any time before the entry of judgment.
- (f)** A person may not recover under this section in actions commenced more than 6 years after his first payment of money to the senior citizens' subdivider in the contested transaction.
- (g)** Any stipulation or provision purporting to bind any person acquiring retirement subdivision or community lands to waive compliance with this act or any rule or order under it is void.

## History

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L. 1969, c. 215, 16.

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## N.J. Stat. § 45:22A-17

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**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### § 45:22A-17. Disposition of subdivision or community lands subject to act

Dispositions of subdivision or community lands are subject to this act if:

- (a) Such lands offered for disposition are located in this State; or
- (b) The developer's principal office is located in this State; or
- (c) Any offer or disposition of subdivision or community lands is made in this State, whether or not the seller or purchaser is then present in this State, if the offer originates within this State or is directed by the seller to a person or place in this State and received by the person or at the place to which it is directed.

### History

L. 1969, c. 215, 17.

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## N.J. Stat. § 45:22A-18

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-18. Extradition of person charged under this act**

In the proceedings for extradition of a person charged with a crime under this act, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other State.

#### **History**

L. 1969, c. 215, 18.

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## N.J. Stat. § 45:22A-19

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-19. Service of process**

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**(a)** In addition to the methods of service provided for in the rules governing the New Jersey Courts, service may be made by delivering a copy of the process to the office of the agency, but it is not effective unless the plaintiff, which may be the agency in a proceeding instituted by it:

- (1)** Forthwith sends a copy of the process and of the pleading by certified mail to the defendant or respondent at his last known address, and
- (2)** The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

**(b)** If any person, including any nonresident of this State, engages in conduct prohibited by this act or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this State, that conduct authorizes the agency to receive service of process in any noncriminal proceeding against him or his successor which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (a).

### **History**

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L. 1969, c. 215, 19.

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## N.J. Stat. § 45:22A-20

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-20. Severability of provisions**

If any provision of this act or the application thereof to any person or circumstances are held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

### **History**

L. 1969, c. 215, 20.

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## **N.J. Stat. § 45:22A-21**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-21. Short title [Planned Real Estate Development Full Disclosure Act]**

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This act shall be known and may be cited as "The Planned Real Estate Development Full Disclosure Act."

#### **History**

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L. 1977, c. 419, 1.

Annotations

#### **LexisNexis® Notes**

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#### **Case Notes**

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**Civil Procedure: Summary Judgment: Burdens of Production & Proof: General Overview**

**Civil Procedure: Summary Judgment: Standards: General Overview**

**Civil Procedure: Summary Judgment: Supporting Materials: General Overview**

**Contracts Law: Breach: Causes of Action: General Overview**

**Governments: Local Governments: Duties & Powers**

**Real Property Law: Brokers: Discipline, Licensing & Regulation**

**Real Property Law: Common Interest Communities: Condominiums: General Overview**

**Real Property Law: Common Interest Communities: Homeowners Associations**

**Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: General Overview**

**Real Property Law: Purchase & Sale: Contracts of Sale: General Overview**

**Real Property Law: Purchase & Sale: Remedies: Duty to Disclose**

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

**Tax Law: State & Local Taxes: Real Property Tax: Assessment & Valuation: General Overview****Civil Procedure: Summary Judgment: Burdens of Production & Proof: General Overview**

Agent and agency were not entitled to summary judgment because the contract with the buyer did not contain an attorney review clause as required under the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. § [45:22A-21](#) et seq., and by the State Bar Association. *Calvert v. K. Hovnanian at Galloway, VI, Inc.*, 128 N.J. 37, 607 A.2d 156, 1992 N.J. LEXIS 378 (N.J. 1992).

**Civil Procedure: Summary Judgment: Standards: General Overview**

Agent and agency were not entitled to summary judgment because the contract with the buyer did not contain an attorney review clause as required under the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. § [45:22A-21](#) et seq., and by the State Bar Association. *Calvert v. K. Hovnanian at Galloway, VI, Inc.*, 128 N.J. 37, 607 A.2d 156, 1992 N.J. LEXIS 378 (N.J. 1992).

**Civil Procedure: Summary Judgment: Supporting Materials: General Overview**

Agent and agency were not entitled to summary judgment because the contract with the buyer did not contain an attorney review clause as required under the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. § [45:22A-21](#) et seq., and by the State Bar Association. *Calvert v. K. Hovnanian at Galloway, VI, Inc.*, 128 N.J. 37, 607 A.2d 156, 1992 N.J. LEXIS 378 (N.J. 1992).

**Contracts Law: Breach: Causes of Action: General Overview**

Purchaser who suffered no losses as a result of condominium developer's failure to timely deliver a current public offering statement pursuant to N.J. Stat. Ann. §§ [45:22A-21](#) et seq., was not entitled to damages, much less double damages and costs under N.J. Stat. Ann. § [45:22A-37\(a\)](#). *Tung v. Briant Park Homes, Inc.*, 287 N.J. Super. 232, 670 A.2d 1092, 1996 N.J. Super. LEXIS 45 (App.Div. 1996).

**Governments: Local Governments: Duties & Powers**

Nothing in either the Municipal Land Use Law, N.J. Stat. Ann. §§ [40:55D-1](#) to -99, or the Municipal Services Act, N.J. Stat. Ann. § [40:67-23.2](#) et seq., prohibits a limited bargained-for delegation of a municipality's obligations to a developer. Under a properly adopted development agreement as provided in the Municipal Land Use Law, a municipality may delegate its statutory obligations under N.J. Stat. Ann. § [40:67-23.3](#) until such time as the developer's control of the executive board of a homeowners association established pursuant to the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. §§ [45:22A-21](#) to -56, terminates. *Ramapo River Reserve Homeowners Ass'n v. Borough of Oakland*, 186 N.J. 439, 896 A.2d 459, 2006 N.J. LEXIS 172 (N.J. 2006).

**Real Property Law: Brokers: Discipline, Licensing & Regulation**

In a real estate sale or lease, where the contract was prepared by a broker, the three-day attorney review period began the day after delivery of a fully-executed contract to the buyer and seller; there was one review period for both parties. *Gordon Development Group, Inc. v. Bradley*, 362 N.J. Super. 170, 827 A.2d 341, 2003 N.J. Super. LEXIS 256 (App.Div. 2003).

## Real Property Law: Common Interest Communities: Condominiums: General Overview

Phantom condominium unit-owners may be liable for common area assessments. [Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 \(App.Div. 2015\)](#).

Agreement to purchase a condominium was void at the buyer's option because the agreement, prepared by the seller, failed to contain an attorney review clause as required by the Planned Real Estate Development Disclosure Act, N.J. Stat. Ann. § [45:22A-21](#) et seq. [Calvert v. K. Hovnanian at Galloway IV, Inc., 247 N.J. Super. 518, 589 A.2d 1049, 1991 N.J. Super. LEXIS 135 \(App.Div. 1991\)](#), aff'd, [128 N.J. 37, 607 A.2d 156, 1992 N.J. LEXIS 378 \(N.J. 1992\)](#).

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § [46:8B-4](#) and N.J. Stat. Ann. § [46:8B-8](#), provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § [45:22A-28](#), N.J. Stat. Ann. § [45:22A-29](#), and N.J. Stat. Ann. § [45:22A-30](#), provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. [Troy, Ltd. v. Renna, 727 F.2d 287, 1984 U.S. App. LEXIS 25937 \(3d Cir. N.J. 1984\)](#), disapproved as stated in [Hall v. Santa Barbara, 797 F.2d 1493, 1986 U.S. App. LEXIS 28850 \(9th Cir. Cal. 1986\)](#).

## Real Property Law: Common Interest Communities: Homeowners Associations

Nothing in either the Municipal Land Use Law, N.J. Stat. Ann. §§ [40:55D-1](#) to -99, or the Municipal Services Act, N.J. Stat. Ann. § [40:67-23.2](#) et seq., prohibits a limited bargained-for delegation of a municipality's obligations to a developer. Under a properly adopted development agreement as provided in the Municipal Land Use Law, a municipality may delegate its statutory obligations under N.J. Stat. Ann. § [40:67-23.3](#) until such time as the developer's control of the executive board of a homeowners association established pursuant to the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. §§ [45:22A-21](#) to -56, terminates. [Ramapo River Reserve Homeowners Ass'n v. Borough of Oakland, 186 N.J. 439, 896 A.2d 459, 2006 N.J. LEXIS 172 \(N.J. 2006\)](#).

Amendments to the Planned Real Estate Development Full Disclosure Act, which were enacted in 1993 and address administration and management of planned real estate developments, codified at N.J. Stat. Ann. §§ [45:22A-43](#) to -48, apply to a community association founded before the enactment of the statute and its amendments. [Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 \(App.Div. 2006\)](#), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\)](#).

## Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: General Overview

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § [46:8B-4](#) and N.J. Stat. Ann. § [46:8B-8](#), provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § [45:22A-28](#), N.J. Stat. Ann. § [45:22A-29](#), and N.J. Stat. Ann. § [45:22A-30](#), provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. [Troy, Ltd. v. Renna, 727 F.2d 287, 1984 U.S. App. LEXIS 25937 \(3d Cir. N.J. 1984\)](#), disapproved as stated in [Hall v. Santa Barbara, 797 F.2d 1493, 1986 U.S. App. LEXIS 28850 \(9th Cir. Cal. 1986\)](#).

## Real Property Law: Purchase & Sale: Contracts of Sale: General Overview

In a real estate sale or lease, where the contract was prepared by a broker, the three-day attorney review period began the day after delivery of a fully-executed contract to the buyer and seller; there was one review period for

both parties. *Gordon Development Group, Inc. v. Bradley*, 362 N.J. Super. 170, 827 A.2d 341, 2003 N.J. Super. LEXIS 256 (App.Div. 2003).

Agreement to purchase a condominium was void at the buyer's option because the agreement, prepared by the seller, failed to contain an attorney review clause as required by the Planned Real Estate Development Disclosure Act, N.J. Stat. Ann. § [45:22A-21](#) et seq. *Calvert v. K. Hovnanian at Galloway IV, Inc.*, 247 N.J. Super. 518, 589 A.2d 1049, 1991 N.J. Super. LEXIS 135 (App.Div. 1991), aff'd, *128 N.J. 37, 607 A.2d 156, 1992 N.J. LEXIS 378 (N.J. 1992)*.

### Real Property Law: Purchase & Sale: Remedies: Duty to Disclose

Purchaser who suffered no losses as a result of condominium developer's failure to timely deliver a current public offering statement pursuant to N.J. Stat. Ann. § [45:22A-21](#) et seq. was not entitled to damages, much less double damages and costs under N.J. Stat. Ann. § [45:22A-37\(a\)](#). *Tung v. Briant Park Homes, Inc.*, 287 N.J. Super. 232, 670 A.2d 1092, 1996 N.J. Super. LEXIS 45 (App.Div. 1996).

Liability under New Jersey's Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. § [45:22A-21](#) et seq., extends only to those who participate in the successful solicitation of a unit in a planned real estate development which was motivated at least in part by a desire to serve his or her own financial interest or those of the developer. *Abrahamsen v. Laurel Gardens Ltd. Partnership*, 276 N.J. Super. 199, 647 A.2d 869, 1993 N.J. Super. LEXIS 953 (Law Div. 1993).

### Real Property Law: Zoning & Land Use: Comprehensive Plans

In finding that a real estate developer's failure to close on condominium units in a timely manner violated The Planned Real Estate Development Full Disclosure Act (Act), N.J. Stat. Ann. § [45:22A-21](#) et seq., and the purchase agreement with the prospective purchasers, the Planned Real Estate Development Section, Department of Community Affairs (DCA) was authorized, pursuant to N.J. Stat. Ann. § [45:22A-37](#), to order revision of contracts to purchase condominium units that violated the Act; rescission was clearly encompassed within the comprehensive powers accorded to the DCA by the Act, and the DCA was not limited in the execution of its statutory mandate authorizing the regulation of planned real estate developments. *Coastal Group v. Planned Real Estate Dev. Section, Dep't of Community Affairs*, 267 N.J. Super. 49, 630 A.2d 814, 1993 N.J. Super. LEXIS 756 (App.Div. 1993).

### Tax Law: State & Local Taxes: Real Property Tax: Assessment & Valuation: General Overview

Phantom condominium unit-owners may be liable for common area assessments. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood*, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015).

## Research References & Practice Aids

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### LexisNexis ® Notes

#### Cross References:

Owner liability for wrongful evictions, see [2A:18-61.6](#).

5-year restriction, see [2A:18-61.1c](#).

Definitions, see [2A:18-61.24](#).

Informing prospective purchaser of act; contract or agreement for sale; clause informing of application of act and acknowledgment by purchaser, see [2A:18-61.34](#).

Definitions, see [2A:18-61.42](#).

Public offering statements, requisites, see [2A:18-61.53](#).

Definitions; disclosure statements to senior citizen housing residents, see [2A:42-113](#).

Manner in which building sold, alternatives, see [2A:42-134](#).

Legislative findings, additional requirements for lodging for record of lien on residential construction, see [2A:44A-21](#).

HMO to provide continuing nursing home care, certain, see [26:2J-4.21](#).

Definitions relative to lifeguard and first aid personnel requirements at certain swimming areas, see [26:4A-4](#).

Existing timeshare plans remain in full force and effect, see [45:15-16.85](#).

Definitions, see [45:22A-23](#).

Application for registration of development, see [45:22A-27](#).

Commissioner to estimate funding required for approved claims, see [46:3B-16](#).

Seller's disclosure duties, see [46:3C-10](#).

Adherence to definition of "cooperative", see [46:8D-18](#).

Certain owners of foreclosed property required to file contact information, see [46:10B-51.1](#).

#### **Administrative Code:**

[N.J.A.C. 11:5-9A.7](#) (2013), CHAPTER REAL ESTATE COMMISSION, Exemptions.

[N.J.A.C. 5:24-1.3](#) (2013), CHAPTER CONDOMINIUM, FEE SIMPLE AND COOPERATIVE CONVERSION AND MOBILE HOME PARK RETIREMENT, Documents required; conversion.

[N.J.A.C. 5:26-1.1](#) (2013), CHAPTER PLANNED REAL ESTATE DEVELOPMENT FULL DISCLOSURE ACT REGULATIONS, Introduction.

[N.J.A.C. 5:26-1.3](#) (2013), CHAPTER PLANNED REAL ESTATE DEVELOPMENT FULL DISCLOSURE ACT REGULATIONS, Definitions.

[N.J.A.C. 8:26-1.3](#) (2013), CHAPTER PUBLIC RECREATIONAL BATHING, Definitions.

#### **LAW REVIEWS & JOURNALS:**

[50 Rutgers L. Rev. 2059](#), ARTICLE: The Restatement (Third) of Torts: Products Liability and New Jersey Law—Not Quite Perfect Together.

[32 Seton Hall L. Rev. 769](#), ARTICLE: The Performance of the New Jersey Supreme Court at the Opening of the Twenty-First Century: New Cast, Same Script.

**NJ ICLE:**

[Commercial Real Estate Transactions in New Jersey 7.6](#) Condominium Documents

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## N.J. Stat. § 45:22A-22

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-22. Public policy**

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The Legislature in recognition of the increased popularity of various forms of real estate development in which owners share common facilities, units, parcels, lots, areas, or interests, and taking notice of the underlying complexities of these new and proliferating forms, deems it necessary in the interest of the public health, safety, and welfare, and in the effort to provide decent, safe and affordable housing, and to foster public understanding and trust, that dispositions in these developments be regulated by the State pursuant to the provisions of this act.

### **History**

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L. 1977, c. 419, 2.

Annotations

### **LexisNexis® Notes**

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### **Case Notes**

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**Contracts Law: Types of Contracts: Guaranty Contracts**

**Real Property Law: Purchase & Sale: Escrow**

**Contracts Law: Types of Contracts: Guaranty Contracts**

Bankruptcy court rejected an insurer's claim that it was not liable under an agreement that guaranteed the performance of a developer's escrow agent to refund deposits which two purchasers paid to the developer and the developer failed to remit to the escrow agent. N.J. Stat. Ann. § [45:22A-22](#) and N.J. Admin. Code § [5:26-6.4](#) required the developer to place the deposits in an escrow account, the effect of the developer's failure to comply with state law was the absence of the deposits in the escrow agent's account for a period seven days, and that effect was too insignificant to deny return of the deposits. [Haspilair v. Bond Safeguard Ins. Co. \(In re Kara Homes, Inc.\), 2008 Bankr. LEXIS 4828 \(Bankr. D.N.J. Aug. 6, 2008\)](#).

**Real Property Law: Purchase & Sale: Escrow**

Bankruptcy court rejected an insurer's claim that it was not liable under an agreement that guaranteed the performance of a developer's escrow agent to refund deposits which two purchasers paid to the developer and the developer failed to remit to the escrow agent. N.J. Stat. Ann. § [45:22A-22](#) and N.J. Admin. Code § [5:26-6.4](#) required the developer to place the deposits in an escrow account, the effect of the developer's failure to comply with state law was the absence of the deposits in the escrow agent's account for a period seven days, and that effect was too insignificant to deny return of the deposits. *Haspilair v. Bond Safeguard Ins. Co. (In re Kara Homes, Inc.), 2008 Bankr. LEXIS 4828 (Bankr. D.N.J. Aug. 6, 2008)*.

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## N.J. Stat. § 45:22A-23

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-23. Definitions.**

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As used in this act [[C.45:22A-21](#) et seq.] unless the context clearly indicates otherwise:

- a. "Disposition" means any sales, contract, lease, assignment, or other transaction concerning a planned real estate development.
- b. "Developer" or "subdivider" means any person who disposes or offers to dispose of any lot, parcel, unit, or interest in a planned real estate development.
- c. "Offer" means any inducement, solicitation, advertisement, or attempt to encourage a person to acquire a unit, parcel, lot, or interest in a planned real estate development.
- d. "Purchaser" or "owner" means any person or persons who acquires a legal or equitable interest in a unit, lot, or parcel in a planned real estate development, and shall be deemed to include a prospective purchaser or owner. However, as used in [P.L. 1993, c.30 \(C.45:22A-43](#) et seq.), "owner" means any person owning a unit, or an "owner" or holder of a "proprietary lease," as those terms are defined under subsections i. and k. of section 3 of "The Cooperative Recording Act of New Jersey," P.L.1987, c.381 ([C.46:8D-3](#)), if the development is a cooperative.
- e. "State" means the State of New Jersey.
- f. "Commissioner" means the Commissioner of Community Affairs.
- g. "Person" shall be defined as in [R.S. 1:1-2](#).
- h. "Planned real estate development" or "development" means any real property situated within the State, whether contiguous or not, which consists of or will consist of, separately owned areas, irrespective of form, be it lots, parcels, units, or interest, and which are offered or disposed of pursuant to a common promotional plan, and providing for common or shared elements or interests in real property. This definition shall not apply to any form of timesharing.

This definition shall specifically include, but shall not be limited to, property subject to the "Condominium Act," P.L.1969, c.257 ([C.46:8B-1](#) et seq.), any form of homeowners' association, any housing cooperative or to any community trust or other trust device.

This definition shall be construed liberally to effectuate the purposes of this act.

- i. "Common promotional plan" means any offer for the disposition of lots, parcels, units or interests of real property by a single person or group of persons acting in concert, where such lots, parcels, units or interests are contiguous, or are known, designated or advertised as a common entity or by a common name.
- j. "Advertising" means and includes the publication or causing to be published of any information offering for disposition or for the purpose of causing or inducing any other person to purchase an interest in a planned real estate development, including the land sales contract to be used and any photographs or drawings or artist's representations of physical conditions or facilities on the property existing or to exist by means of any:

- (1) Newspaper or periodical;
- (2) Radio or television broadcast;
- (3) Written or printed or photographic matter;
- (4) Billboards or signs;
- (5) Display of model houses or units;
- (6) Material used in connection with the disposition or offer of the development by radio, television, telephone or any other electronic means; or
- (7) Material used by developers or their agents to induce prospective purchasers to visit the development, particularly vacation certificates which require the holders of such certificates to attend or submit to a sales presentation by a developer or his agents.

“Advertising” does not mean and shall not be deemed to include: Stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities prospectuses, applications for listing securities on stock exchanges, and the like; all communications addressed to and relating to the account of any person who has previously executed a contract for the purchase of the subdivider’s lands except when directed to the sale of additional lands.

- k.** “Non-binding reservation agreement” means an agreement between the developer and a purchaser and which may be canceled without penalty by either party upon written notice at any time prior to the formation of a contract for the disposition of any lot, parcel, unit or interest in a planned real estate development.
- l.** “Blanket encumbrance” means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a development or affecting more than one lot, unit, parcel, or interest therein, but does not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.
- m.** “Conversion” means any change with respect to a real estate development or subdivision, apartment complex or other entity concerned with the ownership, use or management of real property which would make such entity a planned real estate development.
- n.** “Association” means an association for the management of common elements and facilities, organized pursuant to section 1 of [P.L. 1993, c.30 \(C.45:22A-43\)](#).
- o.** “Executive board” means the executive board of an association, as provided for in section 3 of [P.L. 1993, c.30 \(C.45:22A- 45\)](#).
- p.** “Unit” means any lot, parcel, unit or interest in a planned real estate development that is, or is intended to be, a separately owned area thereof.
- q.** “Association member” means the owner of a unit within a planned real estate development, or a unit’s tenant to the extent that the governing documents of the planned real estate development permit tenant membership in the association, and the developer to the extent that the development contains unsold lots, parcels, units, or interests pursuant to subsection c. of section 1 of [P.L. 1993, c.30 \(C.45:22A-43\)](#). This definition shall not be construed to provide the developer a different transition obligation than that required pursuant to section 5 of [P.L. 1993, c.30 \(C.45:22A-47\)](#), or to require that the developer is allowed to vote in executive board elections.
- r.** “Good standing” means the status - solely with respect to eligibility to (1) vote in executive board elections, (2) vote to amend the bylaws, and (3) nominate or run for any membership position on the executive board - applicable to an association member who is current on the payment of common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed, and which association member has not failed to satisfy a judgment for common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed. An association member is in good standing if he is in full compliance with a settlement agreement with respect to the

payments of assessments, legal fees or other charges lawfully assessed, or the association member has a pending, unresolved dispute concerning charges assessed which dispute has been initiated: through a valid alternative to litigation pursuant to subsection c. of section 2 of [P.L. 1993, c. 30 \(C.45:22A-44\)](#); through subsection (k) of section 14 of the "Condominium Act," P.L.1969, c.257 ([C.46:8B-14](#)); or through a pertinent court action.

**s. "Voting-eligible tenant"** means a tenant of a unit within a planned real estate development in which:

- (1) the governing documents of the development permit the tenant's participation in executive board elections, and
- (2) either (a) the development has allowed tenant participation in executive board elections as a standard practice prior to the effective date of [P.L. 2017, c. 106 \(C.45:22A-45.1 et al.\)](#), or (b) the owner has affirmatively acknowledged the right of the tenant to vote through a provision of a written lease agreement or separate document.

This definition shall not be construed to affect voting as an agent of the owner through a proxy or power of attorney. Pursuant to subsection d. of this section, if the development is a cooperative corporation, then, an "owner" or holder of a "proprietary lease," as those terms are defined under subsections i. and k. of section 3 of "The Cooperative Recording Act of New Jersey," P.L.1987, c.381 ([C.46:8D-3](#)), is also an "owner," not a tenant, for the purposes of [P.L. 1993, c. 30 \(C.45:22A-43 et seq.\)](#).

## History

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L. 1977, c. 419, § 3; amended [1993, c. 30](#), § 7; [2006, c. 63](#), § 39, eff. Oct. 31, 2006; [2017, c. 106](#), § 2, eff. July 13, 2017.

Annotations

## LexisNexis® Notes

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### Notes

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#### Publisher's Note:

The bracketed material was added by the Publisher to provide a reference.

#### Editor's Note:

"New Jersey Real Estate Timeshare Act," see [45:15-16.50 et seq.](#)

#### Effective Dates:

Section 41 of L. [2006, c. 63](#) provides: "This act shall take effect on the 90th day following enactment." Chapter 63, L. 2006, was approved on Aug. 2, 2006.

Section 9 of L. [2017, c. 106](#) provides: "This act shall take effect immediately, except that paragraphs (1) through (9) of subsection c. of section 6 concerning notice, nominations, ballot content, voting, and vote distribution in executive board elections shall remain inoperative until the first day of the third month next following enactment and shall be

applicable to each executive board election on or after that date." Chapter 106, L. 2017, was approved on July 13, 2017.

**Amendment Note:**

2006 amendment, by Chapter 63, added the last sentence in the first paragraph of h., which reads: "This definition shall not apply to any form of timesharing."

2017 amendment, by Chapter 106, added the last sentence of d., and q. through s.

**Case Notes**

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**Governments: Local Governments: Ordinances & Regulations****Real Property Law: Common Interest Communities: Condominiums: General Overview****Real Property Law: Zoning & Land Use: Comprehensive Plans****Governments: Local Governments: Ordinances & Regulations**

City ordinance imposing a moratorium on condominium conversion was preempted by comprehensive state regulation of condominium conversion and tenant protection under the Planned Real Estate Development Disclosure Act. *Plaza Joint Venture v. Atlantic City*, 174 N.J. Super. 231, 416 A.2d 71, 1980 N.J. Super. LEXIS 554 (App.Div. 1980).

**Real Property Law: Common Interest Communities: Condominiums: General Overview**

City ordinance imposing a moratorium on condominium conversion was preempted by comprehensive state regulation of condominium conversion and tenant protection under the Planned Real Estate Development Disclosure Act. *Plaza Joint Venture v. Atlantic City*, 174 N.J. Super. 231, 416 A.2d 71, 1980 N.J. Super. LEXIS 554 (App.Div. 1980).

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

City ordinance imposing a moratorium on condominium conversion was preempted by comprehensive state regulation of condominium conversion and tenant protection under the Planned Real Estate Development Disclosure Act. *Plaza Joint Venture v. Atlantic City*, 174 N.J. Super. 231, 416 A.2d 71, 1980 N.J. Super. LEXIS 554 (App.Div. 1980).

**Research References & Practice Aids**

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**Cross References:**

Definitions, see [2A:18-61.42](#).

Powers of association, see [46:8B-15](#).

Definitions relative to solar energy systems, see [52:27D-141.3](#).

Identifying emblem to be affixed to front of structures with truss construction, see [52:27D-198.4](#).

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## N.J. Stat. § 45:22A-24

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-24. Administration of act**

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This act shall be administered by the Division of Housing and Development in the State Department of Community Affairs, hereinafter referred to as the "agency."

#### **History**

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L. 1977, c. 419, § 4; amended [1993, c. 258](#), § 9.

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## **N.J. Stat. § 45:22A-25**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-25. Exemptions**

- a.** Unless the method of disposition is adopted for purposes of evasion, the provision of this act shall not apply to offers or dispositions:
  - (1)** By an owner for his own account in a single or isolated transaction;
  - (2)** Wholly for industrial, commercial, or other nonresidential purposes;
  - (3)** Pursuant to court order;
  - (4)** By the United States, by this State or any of its agencies or political subdivisions;
  - (5)** Of real property located without the State;
  - (6)** Of cemetery lots or interests;
  - (7)** Of less than 100 lots, parcels, units or interests; provided, however, that with respect to condominiums and cooperatives, this exemption shall not apply, irrespective of the number of lots, parcels, units, or interests offered or disposed of;
  - (8)** Of developments where the common elements or interests, which would otherwise subject the offering to this act, are limited to the provision of unimproved, unencumbered open space;
  - (9)** In a development composed wholly of rental units, where the relationship created is one of landlord and tenant;
  - (10)** Of any form of timesharing.
- b.** The agency may from time to time, pursuant to its rules and regulations, exempt from any of the provisions of this act any development, or any lots, units, parcels, or interests in a development, if it finds that the enforcement of this act with respect to such, is not necessary in the public interest or required for the protection of purchasers by reason of the small amount of the purchase price involved, the limited character of the offering, or the limited nature of the common or shared elements.

### **History**

L. 1977, c. 419, § 5; L. [2006, c. 63](#), § 40, eff. Oct. 31, 2006.

Annotations

### **LexisNexis® Notes**

### **Notes**

**Editor's Note:**

"New Jersey Real Estate Timeshare Act," see [45:15-16.50](#) et seq.

**Effective Dates:**

Section 41 of L. [2006, c. 63](#) provides: "This act shall take effect on the 90th day following enactment." Chapter 63, L. 2006, was approved on Aug. 2, 2006.

**Amendment Note:**

2006 amendment, by Chapter 63, added a.(10).

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## N.J. Stat. § 45:22A-26

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-26. Registration of development; delivery to purchaser of current public offering statement; right to cancel contract after execution; notice**

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a. Unless otherwise exempted:

- (1) No developer may offer or dispose of any interest in a planned real estate development, prior to the registration of such development with the agency.
- (2) No developer may dispose of any lot, parcel, unit, or interest in a planned real estate development, unless he: delivers to the purchaser a current public offering statement, on or before the contract date of such disposition.

b. Any contract or agreement for the purchase of any parcel, lot, unit, or interest in a planned real estate development may be canceled without cause by the purchaser by sending or delivering written notice of cancellation by midnight of the seventh calendar day following the day on which the purchaser has executed such contract or agreement. Every such contract or agreement shall contain, in writing, the following notice in 10-point bold type or larger, directly above the space provided for the signature of the purchaser:

“NOTICE TO THE PURCHASER: you have the right to cancel this contract by sending or delivering written notice of cancellation to the developer by midnight of the seventh calendar day following the day on which it was executed. Such cancellation is without penalty, and any deposit made by you shall be promptly refunded in its entirety.”

c. Notice as required in subsection b. shall, in addition to all other requirements, be conspicuously located and simply stated in the public offering statement.

d. The developer shall make copies of the public offering statement freely available to prospective purchasers prior to the contract date of disposition.

### **History**

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L. 1977, c. 419, 6.

Annotations

### **LexisNexis® Notes**

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### **Case Notes**

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**Civil Procedure: Justiciability: Standing: Third Party Standing****Real Property Law: Common Interest Communities: Condominiums: Condominium Associations****Civil Procedure: Justiciability: Standing: Third Party Standing**

Condominium association has standing to assert claims for common law fraud and consumer fraud against third-party contractors and materialmen for defects in the construction of the common elements, regardless of whether the association formally existed when the developer contracted with the third-parties; pursuant to the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. § [45:22A-26](#), any subcontractor or materialman entering into a contract or supplying a product for use in the construction of the common elements of a condominium association after the developer registers the condominium, is on constructive notice that representations made to, and omissions withheld from, the developer will be deemed as if they were made to, or withheld from, the association, once the association assumes control of the condominium. *Port Liberte Homeowners Ass'n v. Sordoni Const. Co.*, [393 N.J. Super. 492, 924 A.2d 592, 2007 N.J. Super. LEXIS 168 \(App.Div. 2007\)](#), certif. denied, 192 N.J. 479, 932 A.2d 30, 2007 N.J. LEXIS 1216 (N.J. 2007).

**Real Property Law: Common Interest Communities: Condominiums: Condominium Associations**

Condominium association has standing to assert claims for common law fraud and consumer fraud against third-party contractors and materialmen for defects in the construction of the common elements, regardless of whether the association formally existed when the developer contracted with the third-parties; pursuant to the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. § [45:22A-26](#), any subcontractor or materialman entering into a contract or supplying a product for use in the construction of the common elements of a condominium association after the developer registers the condominium, is on constructive notice that representations made to, and omissions withheld from, the developer will be deemed as if they were made to, or withheld from, the association, once the association assumes control of the condominium. *Port Liberte Homeowners Ass'n v. Sordoni Const. Co.*, [393 N.J. Super. 492, 924 A.2d 592, 2007 N.J. Super. LEXIS 168 \(App.Div. 2007\)](#), certif. denied, 192 N.J. 479, 932 A.2d 30, 2007 N.J. LEXIS 1216 (N.J. 2007).

**Research References & Practice Aids**

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**LexisNexis® Notes****Cross References:**

Organization of association, see [45:22A-43](#).

## **N.J. Stat. § 45:22A-27**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-27. Application for registration of development**

- a. The application for registration of the development shall be filed as prescribed by the agency's rules and shall contain the following documents and information:
  - (1) An irrevocable appointment of the agency to receive service of any lawful process in any noncriminal proceeding arising under this act against the developer or his agents;
  - (2) The states or other jurisdictions, including the federal government, in which an application for registration or similar documents have been filed, and any adverse order, judgment or decree entered in connection with the development by the regulatory authorities in each jurisdiction or by any court;
  - (3) The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status, or performing similar management functions; the extent and nature of his interest in the applicant or the development as of a specified date within 30 days of the filing of the application;
  - (4) Copies of its articles of incorporation, with all amendments thereto, if the developer is a corporation; copies of all instruments by which the trust is created or declared, if the developer is a trust; copies of its articles of partnership or association and all other papers pertaining to its organization, if the developer is a partnership, unincorporated association, joint stock company, or any other form of organization; and if the purported holder of legal title is a person other than the developer, copies of the above documents from such person;
  - (5) A legal description of the lands offered for registration, together with a map showing the subdivision proposed or made, and the dimensions of the lots, parcels, units, or interests, as available, and the relation of such lands to existing streets, roads, and other improvements;
  - (6) Copies of the deed or other instrument establishing title to the subdivision in the developer, and a statement in a form acceptable to the agency of the condition of the title to the land comprising the development, including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, or by other evidence of title acceptable to the agency;
  - (7) Copies of the instrument which will be delivered to a purchaser to evidence his interest in the development, and of the contracts and other agreements which a purchaser will be required to agree to or sign;
  - (8) Copies of any management agreements, service contracts, or other contracts or agreements affecting the use, maintenance or access of all or a part of the development;
  - (9) A statement of the zoning and other government regulations affecting the use of the development including the site plans and building permits and their status, and also of any existing tax and existing or proposed special taxes or assessments which affect the development; and a statement of the existing use of adjoining lands;

(10) A statement that the lots, parcels, units or interests in the development will be offered to the public, and that responses to applications will be made without regard to marital status, sex, race, creed, or national origin;

(11) A statement of the present condition of access to the development, the existence of any unusual conditions relating to noise or safety, which affect the development and are known to the developer, the availability of sewage disposal facilities and other public utilities including water, electricity, gas, and telephone facilities in the development to nearby municipalities, and the nature of any improvements to be installed by the developer and his estimated schedule for completion;

(12) In the case of any conversion an engineering survey shall be required, which shall include mechanical, structural, electrical and engineering reports to disclose the condition of the building;

(13) In the case of any development or portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under the instrument or instruments creating such encumbrances and the steps, if any, taken to protect the purchaser in such eventuality;

(14) A narrative description of the promotional plan for the disposition of the lots, parcels, units or interests in the development, together with copies of all advertising material which has been prepared for public distribution, and an indication of their means of communication;

(15) The proposed public offering statement;

(16) A current financial statement, which shall include such information concerning the developer as the agency deems to be pertinent, including but not limited to, a profit and loss statement certified by an independent public accountant and information concerning any adjudication of bankruptcy during the last five years against the developer, or any principal owning more than 10% of the interest in the development at the time of filing, provided, however, that this shall not extend to limited partners, or others whose interests are solely those of investors;

(17) Copies of instruments creating easements or other restrictions;

(18) A statement of the status of compliance with the requirements of all laws, ordinances, regulations, and other requirements of governmental agencies having jurisdiction over the premises;

(19) Such other information, documentation, or certification as the agency deems necessary in furtherance of the protective purposes of this act.

b. The information contained in any application for registration and copies thereof, shall be made available to interested parties at a reasonable charge and under such regulations as the agency may prescribe.

c. A developer may register additional property pursuant to the same common promotional plan as those previously registered by submitting another application, providing such additional information as may be necessary to register the additional lots, parcels, units or interests, which shall be known as a consolidated filing.

d. The developer shall immediately report any material changes in the information contained in an application for registration. The term "material changes" shall be further defined by the agency in its regulations.

e. The application shall be accompanied by a fee in an amount equal to \$500.00 plus \$35.00 per lot, parcel, unit, or interest contained in the application, which fees may be used by the agency to partially defray the cost of rendering services under the act. If the fees are insufficient to defray the cost of rendering services under P.L.1977, c. 419 ([C. 45:22A-21](#) et seq.), the agency shall, by regulation, establish a revised fee schedule. The revised fee schedule shall assure that the fees collected reasonably cover but do not exceed the expenses and administration of implementing P.L.1977, c. 419 ([C. 45:22A-21](#) et seq.).

f.

- (1) An engineering study required pursuant to paragraph (12) of subsection a. of this section shall be conducted, and the results thereof certified, by a person licensed in this State as a professional engineer pursuant to P.L.1938, c. 342 (C. 45:8-27 et seq.).
- (2) The engineer who prepares the survey shall certify to the agency whether, in his judgment, the building is in compliance with the code standards adopted under the "Hotel and Multiple Dwelling Law," P.L.1967, c. 76 (C. 55:13A-1 et seq.) and the "Uniform Fire Safety Act," P.L.1983, c. 383 (C. 52:27D-192 et seq.) and shall list all outstanding violations then existing in accordance with his observation and judgment. The engineer shall be immune from tort liability with regard to such certification and list in the same manner and to the same extent as if he were a public employee protected by the "New Jersey Tort Claims Act," N.J.S. 59:1-1 et seq.
- (3) If the agency finds there is a significant discrepancy between the engineering survey submitted by the applicant and an engineering survey submitted by any tenant or tenants currently residing in the building, the agency shall investigate the matter in order to determine the true state of facts prior to approving the application. The agency may use its own staff or contract with independent professionals, and may conduct hearings in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). Any cost to the agency of hiring independent professionals shall be borne by the applicant developer at the discretion of the agency.

## History

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L. 1977, c. 419, § 7; amended 1983, c. 265; 1991, c. 509, § 21.

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## N.J. Stat. § 45:22A-28

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-28. Public offering statements, requisites**

- a. A public offering statement shall disclose fully and accurately the characteristics of the development and the lots, parcels, units, or interests therein offered, and shall make known to prospective purchasers all unusual or material circumstances or features affecting the development. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and regulations and shall include the following:

  - (1) The name and principal address of the developer;
  - (2) A general narrative description of the development stating the total number of lots, units, parcels, or interests in the offering, and the total number of such interests planned to be sold, leased or otherwise transferred;
  - (3) Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance, or access of all or any part of the development, with a brief and simple narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the developer and the managing agent or firm;
  - (4)

    - (a) The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations, affecting such lands and each unit, lot, parcel, or interest, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect such lands; and
    - (b) In the case of a conversion subject to the provisions of the "Tenant Protection Act of 1992," [P.L.1991, c. 509 \(C. 2A:18-61.40 et al.\)](#), the information required pursuant to section 14 of [P.L.1991, c. 509 \(C. 2A:18-61.53\)](#);
  - (5)

    - (a) Relevant community information, including hospitals, health and recreational facilities of any kind, streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities; and
    - (b) The estimated cost, size, date of completion, and responsibility for construction and maintenance of existing and proposed amenities which are referred to in connection with the offering or disposition of any interest in the subdivision or subdivided lands;
  - (6) A copy of the proposed budget for the operation and maintenance of the common or shared elements or interests;
  - (7) Additional information required by the agency to assure full and fair disclosure to prospective purchasers.
- b. The public offering statement shall not be used for any promotional purposes before registration of the development and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the development or dispositions therein. No portion of the public offering

statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement, unless the agency requires or permits it.

- c. The agency may require the developer to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of a planned real estate development may be made after registration without the approval of the agency. A public offering statement shall not be current unless all amendments have been incorporated.
- d. The public offering statement shall, to the extent possible, combine simplicity and accuracy of information, in order to facilitate purchaser understanding of the totality of rights, privileges, obligations and restrictions, comprehended under the proposed plan of development. In reviewing such public offering statement, the agency shall pay close attention to the requirements of this subsection, and shall use its discretion to require revision of a public offering statement which is unnecessarily complex, confusing, or is illegible by reason of type size or otherwise.

## History

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L. 1977, c. 419, § 8; amended [1991, c. 509](#), § 22.

Annotations

## LexisNexis® Notes

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## Case Notes

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**Legal Ethics: Client Relations: Effective Representation**

**Real Property Law: Common Interest Communities: Condominiums: General Overview**

**Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: General Overview**

### Legal Ethics: Client Relations: Effective Representation

Law firm that failed to comply with disclosure requirements of N.J. Stat. Ann. § [45:22A-28\(a\)](#) was held liable to investors who relied on information provided by law firm in an amended public offering statement, on the principle that an attorney was liable to a nonclient if he could foresee reliance on his services. [Atlantic Paradise Assocs. v. Perskie, Nehmad & Zeltner, 284 N.J. Super. 678, 666 A.2d 211, 1995 N.J. Super. LEXIS 521 \(App.Div. 1995\)](#), certif. denied, 143 N.J. 518, 673 A.2d 276, 1996 N.J. LEXIS 282 (N.J. 1996).

### Real Property Law: Common Interest Communities: Condominiums: General Overview

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § [46:8B-4](#) and N.J. Stat. Ann. § [46:8B-8](#), provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § [45:22A-28](#), N.J. Stat. Ann. § [45:22A-29](#), and N.J. Stat. Ann. § [45:22A-30](#), provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. [Troy, Ltd. v. Renna, 727 F.2d 287, 1984 U.S.](#)

[App. LEXIS 25937 \(3d Cir. N.J. 1984\)](#), disapproved as stated in [Hall v. Santa Barbara, 797 F.2d 1493, 1986 U.S. App. LEXIS 28850 \(9th Cir. Cal. 1986\)](#).

## Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: General Overview

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § [46:8B-4](#) and N.J. Stat. Ann. § [46:8B-8](#), provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § [45:22A-28](#), N.J. Stat. Ann. § [45:22A-29](#), and N.J. Stat. Ann. § [45:22A-30](#), provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. [Troy, Ltd. v. Renna, 727 F.2d 287, 1984 U.S. App. LEXIS 25937 \(3d Cir. N.J. 1984\)](#), disapproved as stated in [Hall v. Santa Barbara, 797 F.2d 1493, 1986 U.S. App. LEXIS 28850 \(9th Cir. Cal. 1986\)](#).

## Research References & Practice Aids

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### LexisNexis® Notes

#### PRACTICE GUIDES & TREATISES:

New Jersey Transaction Guide § [130.20](#) et seq. Creation of Condominiums

New Jersey Transaction Guide § [130.30](#) et seq. Administration of Condominiums

#### PRACTICE FORMS:

7-130 New Jersey Transaction Guide § [130.220](#), Public Offering Statement

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## N.J. Stat. § 45:22A-29

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-29. Investigation of application**

Upon receipt of an application for registration in proper form, the agency shall forthwith initiate an investigation to determine that:

- a. The developer can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms of the offer;
- b. There is reasonable assurance that all proposed improvements can be completed as represented;
- c. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the agency in its rules and afford full and fair disclosure;
- d. The developer has not, or if a corporation, its officers and principals have not, been convicted of a crime involving any aspect of the real estate sales business in this State, United States, or any other state or foreign country within the past 10 years; and that the developer has not been subject to any permanent injunction or final administrative order restraining a false or misleading promotional plan involving real property dispositions the seriousness of which in the opinion of the agency warrants the denial of registration; and
- e. The public offering statement requirements of this act have been satisfied.

### **History**

L. 1977, c. 419, 9.

Annotations

### **LexisNexis® Notes**

### **Case Notes**

**Real Property Law: Common Interest Communities: Condominiums: General Overview**

**Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: General Overview**

**Real Property Law: Common Interest Communities: Condominiums: General Overview**

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § [46:8B-4](#) and N.J. Stat. Ann. § [46:8B-8](#), provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § [45:22A-28](#), N.J. Stat. Ann. § [45:22A-29](#), and N.J. Stat. Ann. § [45:22A-30](#), provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. *Troy, Ltd. v. Renna*, 727 F.2d 287, 1984 U.S. App. [LEXIS 25937 \(3d Cir. N.J. 1984\)](#), disapproved as stated in *Hall v. Santa Barbara*, 797 F.2d 1493, 1986 U.S. App. [LEXIS 28850 \(9th Cir. Cal. 1986\)](#).

#### **Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: General Overview**

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § [46:8B-4](#) and N.J. Stat. Ann. § [46:8B-8](#), provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § [45:22A-28](#), N.J. Stat. Ann. § [45:22A-29](#), and N.J. Stat. Ann. § [45:22A-30](#), provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. *Troy, Ltd. v. Renna*, 727 F.2d 287, 1984 U.S. App. [LEXIS 25937 \(3d Cir. N.J. 1984\)](#), disapproved as stated in *Hall v. Santa Barbara*, 797 F.2d 1493, 1986 U.S. App. [LEXIS 28850 \(9th Cir. Cal. 1986\)](#).

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## N.J. Stat. § 45:22A-30

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-30. Registration; notice of filing of application; acceptance or rejection**

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- a. Upon receipt of the application for registration in proper form, and accompanied by proper fee, the agency shall, within 10 business days, issue a notice of filing to the applicant. Within 90 days from the date of the notice of filing, the agency shall enter an order registering the development or rejecting the registration. If no order of rejection is entered within 90 days from the date of notice of filing, the development shall be deemed registered unless the applicant has consented in writing to a delay.
- b. If the agency affirmatively determines that the requirements of section 9 of this act have been met, it shall enter an order registering the development.
- c. If the agency determines upon inquiry and examination that any of the requirements of section 9 of this act have not been met, the agency shall notify the applicant that the application for registration must be corrected in such particulars, within 30 days, as designated by the agency. If the requirements are not met within the time allowed, the agency may enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective until 20 days after the lapse of the aforesaid specified period during which 20-day period the applicant may petition for reconsideration and shall be entitled to a hearing. Such order of rejection shall not take effect, in any event, until such time as the hearing, once requested, has been given to the applicant.

### **History**

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L. 1977, c. 419, 10.

Annotations

### **LexisNexis® Notes**

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### **Case Notes**

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**Administrative Law: Agency Adjudication: Hearings: General Overview**

**Real Property Law: Common Interest Communities: Condominiums: General Overview**

**Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: General Overview**

**Administrative Law: Agency Adjudication: Hearings: General Overview**

Planned Real Estate Development Full Disclosure Act, specifically N.J. Stat. Ann. § [45:22A-30](#), granted developers an evidentiary hearing upon rejection of his application for registration, but no such right was granted to tenants; the only remedy for tenants was an action for double damages against developers for violations of the act or for material misrepresentations. [In re Registration for Cooperative Conversion of Woodcliff Gardens, 224 N.J. Super. 168, 539 A.2d 1264, 1988 N.J. Super. LEXIS 101 \(App.Div. 1988\)](#), certif. denied, [111 N.J. 628, 546 A.2d 543, 1988 N.J. LEXIS 345 \(N.J. 1988\)](#).

**Real Property Law: Common Interest Communities: Condominiums: General Overview**

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § [46:8B-4](#) and N.J. Stat. Ann. § [46:8B-8](#), provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § [45:22A-28](#), N.J. Stat. Ann. § [45:22A-29](#), and N.J. Stat. Ann. § [45:22A-30](#), provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. [Troy, Ltd. v. Renna, 727 F.2d 287, 1984 U.S. App. LEXIS 25937 \(3d Cir. N.J. 1984\)](#), disapproved as stated in [Hall v. Santa Barbara, 797 F.2d 1493, 1986 U.S. App. LEXIS 28850 \(9th Cir. Cal. 1986\)](#).

**Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: General Overview**

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § [46:8B-4](#) and N.J. Stat. Ann. § [46:8B-8](#), provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § [45:22A-28](#), N.J. Stat. Ann. § [45:22A-29](#), and N.J. Stat. Ann. § [45:22A-30](#), provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. [Troy, Ltd. v. Renna, 727 F.2d 287, 1984 U.S. App. LEXIS 25937 \(3d Cir. N.J. 1984\)](#), disapproved as stated in [Hall v. Santa Barbara, 797 F.2d 1493, 1986 U.S. App. LEXIS 28850 \(9th Cir. Cal. 1986\)](#).

## N.J. Stat. § 45:22A-31

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-31. Annual report by developer**

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Within 30 days after each anniversary date of the order registering the development, and while the developer retains any interest therein, he shall file with the agency an annual report reflecting any material changes in information contained in the original application for registration, in a form designated by the agency.

In the event that the agency determines that such annual report is no longer necessary for the protection of the public interest, or when the annual report reveals that the developer no longer retains any interest, and no longer has contractual, bonded or other obligations in the development, the agency shall issue an order terminating the responsibilities of the developer under this act.

### **History**

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L. 1977, c. 419, 11.

Annotations

### **LexisNexis® Notes**

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### **Research References & Practice Aids**

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**Administrative Code:**

[N.J.A.C. 11:5-9A.7](#) (2013), CHAPTER REAL ESTATE COMMISSION, Exemptions.

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## N.J. Stat. § 45:22A-32

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-32. Powers of agency**

a. The agency may:

- (1) Accept registrations filed in this State, in other states or with the Federal Government;
- (2) Contract with similar agencies in this State or other jurisdictions to perform investigative functions;
- (3) Accept grants in aid from any governmental or other source;
- (4) Cooperate with similar agencies in this State or in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices;
- (5) Grant exemptions pursuant to its rules and regulations;
- (6) Make necessary public or private investigations within or outside of this State to determine whether any person has violated or is about to violate this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder;
- (7) Require or permit any person to file a statement in writing, under oath or otherwise, as the agency determines, as to all the facts and circumstances concerning the matter to be investigated;
- (8) For the purpose of any investigation or proceeding under this act, the agency or any officer designated by rule, may administer oaths, or affirmations, and upon its own motion or upon request of any party may subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.
- (9) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the agency may apply to the Superior Court for an order compelling compliance.

### **History**

L. 1977, c. 419, 12.

## N.J. Stat. § 45:22A-33

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-33. Cease and desist orders; grounds**

**a.** If the agency determines after notice and hearing that a person has:

- (1) Violated any provision of this act;
- (2) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of a unit;
- (3) Made any substantial change in the plan of disposition and development of the subdivision subsequent to the order of registration without obtaining prior written approval from the agency;
- (4) Disposed of any units, lots, parcels, or interests in a planned real estate development which have not been registered with the agency, or;
- (5) Violated any lawful order or rule of the agency; it may issue an order requiring the person to cease and desist from the unlawful practice or to take such other affirmative action as in the judgment of the agency will carry out the purposes of this act.

**b.** If the agency makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing shall be held within 10 days of such request to determine whether or not it becomes permanent. Such temporary cease and desist order shall be forwarded by certified mail.

### **History**

L. 1977, c. 419, 13.

Annotations

### **LexisNexis® Notes**

### **Case Notes**

**Governments: Legislation: Interpretation**

**Real Property Law: Common Interest Communities: General Overview**

**Real Property Law: Purchase & Sale: Remedies: Duty to Disclose**

## Governments: Legislation: Interpretation

Department of Community Affairs was not authorized by N.J. Stat. Ann. § [45:22A-33](#) to order compensatory damages against a developer to reimburse a townhouse association for the developer's failure to disclose the true amount of the real estate taxes levied on the common areas of the development; the statute's language allowing the department "to take such other affirmative action" was linked only to the imposition of a cease and desist order, not to the assessment of compensatory damages. *State, Dep't of Community Affairs, Div. of Hous. & Dev., etc. v. Seaview Island Assocs.*, 264 N.J. Super. 75, 624 A.2d 34, 1993 N.J. Super. LEXIS 150 (App.Div. 1993).

## Real Property Law: Common Interest Communities: General Overview

Department of Community Affairs was not authorized by N.J. Stat. Ann. § [45:22A-33](#) to order compensatory damages against a developer to reimburse a townhouse association for the developer's failure to disclose the true amount of the real estate taxes levied on the common areas of the development; the statute's language allowing the department "to take such other affirmative action" was linked only to the imposition of a cease and desist order, not to the assessment of compensatory damages. *State, Dep't of Community Affairs, Div. of Hous. & Dev., etc. v. Seaview Island Assocs.*, 264 N.J. Super. 75, 624 A.2d 34, 1993 N.J. Super. LEXIS 150 (App.Div. 1993).

## Real Property Law: Purchase & Sale: Remedies: Duty to Disclose

Department of Community Affairs was not authorized by N.J. Stat. Ann. § [45:22A-33](#) to order compensatory damages against a developer to reimburse a townhouse association for the developer's failure to disclose the true amount of the real estate taxes levied on the common areas of the development; the statute's language allowing the department "to take such other affirmative action" was linked only to the imposition of a cease and desist order, not to the assessment of compensatory damages. *State, Dep't of Community Affairs, Div. of Hous. & Dev., etc. v. Seaview Island Assocs.*, 264 N.J. Super. 75, 624 A.2d 34, 1993 N.J. Super. LEXIS 150 (App.Div. 1993).

## Research References & Practice Aids

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### LexisNexis® Notes

### Cross References:

Noncompliance; penalties, see [45:22A-53](#).

### Administrative Code:

[N.J.A.C. 5:10A-1.1](#) (2013), CHAPTER PROPRIETARY CAMPGROUND FACILITY HEALTH AND SAFETY STANDARDS, Administration and enforcement.

## N.J. Stat. § 45:22A-34

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-34. Revocation of registration; grounds; notice and hearing; findings of fact; in lieu cease and desist order**

---

**a.** A registration may be revoked after notice and hearing upon a written finding of fact that the developer has:

- (1)** Failed to comply with the terms of a cease and desist order;
- (2)** Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, dishonest dealing, or other like offense;
- (3)** Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of purchasers;
- (4)** Failed faithfully to perform any stipulation or agreement made with the agency as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement;
- (5)** Advertised his lands or responded to applications for his lands in a manner which was discriminatory on the basis of marital status, sex, race, creed, or national origin;
- (6)** Willfully violated any provision of this act or of a rule adopted thereunder;
- (7)** Made intentional misrepresentation or concealed material facts in an application for registration filed for registration.

**b.** Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

**c.** If the agency finds, after notice and hearing, that the developer has been guilty of a violation for which revocation could be ordered, it may in lieu thereof issue a cease and desist order. Revocation of registration may be utilized only as a remedy of last resort.

### **History**

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L. 1977, c. 419, 14.

## **N.J. Stat. § 45:22A-35**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-35. Rules and regulations; injunctions or temporary restraining orders; intervention in suits by agency**

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- a. The agency shall adopt, amend, or repeal such rules and regulations as are reasonably necessary for the enforcement of the provisions of this act in accordance with the provisions of the Administrative Procedure Act, P.L.1968, c. 410 ([C. 52:14B-1](#) et seq.). The rules may provide for, but are not limited to: provisions for advertising standards to insure full and fair disclosure; disclosure provisions relating to conversions; provisions relating to nonbinding reservation agreements; provisions for adequate bonding or access to some escrow or trust fund not otherwise required by the municipal governing body to be located within this State, so as to insure compliance with the provisions of this act, and to compensate purchasers for failure of the registrant to perform in accordance with the terms of any contract or public statement; provisions that require a registrant to deposit purchaser down payments, security deposits or other funds in an escrow account, or with an attorney licensed to practice law in this State, until such time as the agency by its rules and regulations deems it appropriate to permit such funds to be released; provisions to insure that all contracts between developer and purchaser are fair and reasonable; provisions that the developer must give a fair and reasonable warranty on construction of any improvements; provisions that the budget for the operation and maintenance of the common or shared elements or interests shall provide for adequate reserves for depreciation and replacement of the improvements; provisions for operating procedures; and such other rules and regulations as are necessary and proper to effectuate the purposes of this act, and taking into account and providing for, the broad range of development plans and devices, management mechanisms, and methods of ownership, permitted under the provisions of this act.
- b. If it appears that a person has engaged, or is about to engage, in an act or practice constituting a violation of a provision of this act, or a rule or order hereunder, the agency, with or without prior administrative proceedings, may bring an action in the Superior Court to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver may be appointed. The agency shall not be required to post a bond in any court proceeding.
- c. The agency may intervene in a suit involving any planned real estate development. In any such suit, by or against the developer, the developer shall promptly furnish the agency with notice of the suit and copies of all pleadings.

### **History**

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L. 1977, c. 419, 15.

Annotations

### **LexisNexis® Notes**

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## Case Notes

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### **Governments: State & Territorial Governments: Police Power**

### **Real Property Law: Common Interest Communities: Condominiums: General Overview**

#### **Governments: State & Territorial Governments: Police Power**

Under N.J. Stat. Ann. § [45:22A-35](#), where a provision of the contract with buyers was that substantial completion of the construction of condominium units shall be evidenced by the issuance of a temporary certificate of occupancy (TCO), the developer was required to return deposits to several buyers when no TCO was issued as of the date closings were scheduled. *Department of Community Affairs, Div. of Housing & Dev. v. Atrium Palace Syndicate, 244 N.J. Super. 329, 582 A.2d 821, 1990 N.J. Super. LEXIS 403 (App.Div. 1990)*, certif. denied, 126 N.J. 317, 598 A.2d 878, 1991 N.J. LEXIS 134 (N.J. 1991).

#### **Real Property Law: Common Interest Communities: Condominiums: General Overview**

Under N.J. Stat. Ann. § [45:22A-35](#), where a provision of the contract with buyers was that substantial completion of the construction of condominium units shall be evidenced by the issuance of a temporary certificate of occupancy (TCO), the developer was required to return deposits to several buyers when no TCO was issued as of the date closings were scheduled. *Department of Community Affairs, Div. of Housing & Dev. v. Atrium Palace Syndicate, 244 N.J. Super. 329, 582 A.2d 821, 1990 N.J. Super. LEXIS 403 (App.Div. 1990)*, certif. denied, 126 N.J. 317, 598 A.2d 878, 1991 N.J. LEXIS 134 (N.J. 1991).

## Research References & Practice Aids

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### **LexisNexis® Notes**

### **Cross References:**

Noncompliance; penalties, see [45:22A-53](#).

### **Administrative Code:**

[N.J.A.C. 5:10A-1.1](#) (2013), CHAPTER PROPRIETARY CAMPGROUND FACILITY HEALTH AND SAFETY STANDARDS, Administration and enforcement.

[N.J.A.C. 5:26](#) (2013), CHAPTER PLANNED REAL ESTATE DEVELOPMENT FULL DISCLOSURE ACT REGULATIONS, 5, Chapter 26 — Chapter Notes.

## N.J. Stat. § 45:22A-36

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-36. Submission to jurisdiction by application; service of process; conduct prohibited by act; authorization of agency to receive service**

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- a. For purposes of this act, an application for registration submitted to the agency shall be deemed a submission by the applicant to the jurisdiction of the New Jersey courts.
- b. In addition to the methods of service of process provided for in the rules governing the New Jersey courts, service may be made by delivering a copy of the process to the office of the agency, but such service shall not be effective unless the plaintiff, which may be the agency in a proceeding instituted by it:
  - (1) Forthwith sends a copy of the process and of the pleading by certified mail to the defendant or respondent at his last known address, and
  - (2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, or within such further time as the court allows.
- c. If any person, including any nonresident of this State, engages in conduct prohibited by this act or any rule or order hereunder, and does not file a consent to the service of process, and personal jurisdiction over him cannot otherwise be obtained in this State, that conduct authorizes the agency to receive service of process in any noncriminal proceeding against him or his successor which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection b.

### **History**

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L. 1977, c. 419, 16.

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## N.J. Stat. § 45:22A-37

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-37. Untruth, omission or misleading statement by developer; liability; persons liable; invalidity of agreement by purchaser to waive compliance with act**

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- a. Any developer disposing of real property subject to this act, who shall violate any of the provisions of section 6 hereof, or who in disposing of such property makes an untrue statement of material fact or omits a material fact from any application for registration, or amendment thereto, or from any public offering statement, or who makes a misleading statement with regard to such disposition, shall be liable to the purchaser for double damages suffered, and court costs expended, including reasonable attorney's fees, unless in the case of an untruth, omission, or misleading statement such developer sustains the burden of proving that the purchaser knew of the untruth, omission or misleading statement, or that he did not rely on such information, or that the developer did not know and in the exercise of reasonable care could not have known of the untruth, omission, or misleading statement.
- b. The court may, in addition to remedies provided herein, frame such other relief as may be appropriate under the circumstances. If the purchaser shall fail in establishing a cause of action, and the court further determines that the action was wholly without merit, the court may award attorney's fees to the developer.
- c. Every person who directly or indirectly controls a development or developer liable under subsection a., every general partner, officer, or director of a developer, and every person occupying a similar status or performing a similar function, shall also be liable jointly and severally with and to the same extent as such developer, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.
- d. A person may not recover under this section in actions commenced more than 6 years after his first payment of money to the developer in the contested transaction.
- e. Any stipulation or provision purporting to bind any purchaser acquiring a parcel, lot, unit, or interest, in any development subject to the provisions of this act, or any rule, regulation, or order promulgated thereunder, to a waiver of compliance with said provisions, shall be void.

### **History**

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L. 1977, c. 419, 17.

Annotations

### **LexisNexis® Notes**

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## Case Notes

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**Civil Procedure: Pleading & Practice: Defenses, Demurrsers & Objections: Failures to State Claims**

**Civil Procedure: Pleading & Practice: Pleadings: Complaints: Requirements**

**Civil Procedure: Pleading & Practice: Pleadings: Heightened Pleading Requirements: Fraud Claims**

**Contracts Law: Breach: Causes of Action: General Overview**

**Contracts Law: Remedies: Rescission & Redhibition: General Overview**

**Real Property Law: Common Interest Communities: Condominiums: Condominium Associations**

**Real Property Law: Purchase & Sale: Interstate Land Sales Full Disclosure Act**

**Real Property Law: Purchase & Sale: Remedies: Duty to Disclose**

**Real Property Law: Subdivisions: State Regulation**

**Torts: Negligence: Defenses: Comparative Negligence: Multiple Parties: Contribution**

**Civil Procedure: Pleading & Practice: Defenses, Demurrsers & Objections: Failures to State Claims**

In a suit wherein condominium unit owners sought control of the condominium association's governing board, the trial court erred by dismissing the unit owners' complaint for failure to state a cause of action because a majority vote of unit owners was not required to accept control of the association before the court was empowered to implement the transfer of control mandated by the New Jersey Condominium Act, N.J. Stat. Ann. § [46:8B-12.1\(a\)](#), for situations with a dormant developer. [Flinn v. Amboy Nat. Bank, 436 N.J. Super. 274, 93 A.3d 422, 2014 N.J. Super. LEXIS 93 \(App.Div. 2014\)](#).

**Civil Procedure: Pleading & Practice: Pleadings: Complaints: Requirements**

Condominium association's Second Amended Complaint failed to allege acts of the two individual defendants to plausibly suggest the level of control necessary to hold them liable with the developer. It failed to allege any level of participation on their part, rather only that they were the sole shareholders and/or members of the limited liability company (LLC), and that the LLC was a shareholder in the sponsor entity. These allegations did not rise to the level of direct or indirect participation to hold the individuals liable under the Planned Real Estate Development Full Disclosure Act, [1200 Grand St. Condo. Ass'n v. Tarragon Corp. \(In re Tarragon Corp.\), 2012 Bankr. LEXIS 75 \(Bankr. D.N.J. Jan. 10, 2012\)](#).

Accepting the allegations as true and in a light most favorable to plaintiff condominium association, defendant limited liability company, as a shareholder with a financial interest in the development and disposition of the units in the condominium complex, may have exerted the requisite control over the developer, rendering itself liable under the New Jersey Planned Real Estate Development Full Disclosure Act. Thus, the Second Amended Complaint gave both a short and plain statement of the claim, as well as particularity as to the foundation of its claims. [1200 Grand St. Condo. Ass'n v. Tarragon Corp. \(In re Tarragon Corp.\), 2012 Bankr. LEXIS 75 \(Bankr. D.N.J. Jan. 10, 2012\)](#).

**Civil Procedure: Pleading & Practice: Pleadings: Heightened Pleading Requirements: Fraud Claims**

Here, plaintiff condominium association did not need to establish fraudulent concealment, and thus the Planned Real Estate Development Full Disclosure Act (PREDFDA) claims did not necessarily "hinge on allegations of fraud"; additionally, notwithstanding the court's prior decision, defendant limited liability company fail to introduce any binding case law applying [Fed. R. Civ. P. 9\(b\)](#) to measure the sufficiency of claims under PREDFDA, nor was the court aware of such authority. For these reasons, the court would not require that claims brought pursuant to PREDFDA meet the heightened pleading requirements of Rule 9(b). [1200 Grand St. Condo. Ass'n v. Tarragon Corp. \(In re Tarragon Corp.\), 2012 Bankr. LEXIS 75 \(Bankr. D.N.J. Jan. 10, 2012\)](#).

### **Contracts Law: Breach: Causes of Action: General Overview**

Purchaser who suffered no losses as a result of condominium developer's failure to timely deliver a current public offering statement pursuant to N.J. Stat. Ann. § [45:22A-21](#) et seq. was not entitled to damages, much less double damages and costs under N.J. Stat. Ann. § [45:22A-37\(a\)](#). [Tung v. Briant Park Homes, Inc., 287 N.J. Super. 232, 670 A.2d 1092, 1996 N.J. Super. LEXIS 45 \(App.Div. 1996\)](#).

### **Contracts Law: Remedies: Rescission & Redhibition: General Overview**

Pursuant to N.J. Stat. Ann. § [45:22A-37\(a\)](#), the proper remedy for defendant developer's failure to provide a public offering statement to plaintiff cargo buyers was money damages rather than revision of the contract; damages were appropriate because of the amount of time that had passed, and changes in the marketplace and in the parties' positions during that time. [Enfield v. FWL, Inc., 256 N.J. Super. 502, 607 A.2d 685, 1991 N.J. Super. LEXIS 496 \(Ch.Div. 1991\)](#), aff'd, [256 N.J. Super. 466, 607 A.2d 666, 1992 N.J. Super. LEXIS 147 \(App.Div. 1992\)](#).

### **Real Property Law: Common Interest Communities: Condominiums: Condominium Associations**

In a suit wherein condominium unit owners sought control of the condominium association's governing board, the trial court erred by dismissing the unit owners' complaint for failure to state a cause of action because a majority vote of unit owners was not required to accept control of the association before the court was empowered to implement the transfer of control mandated by the New Jersey Condominium Act, N.J. Stat. Ann. § [46:8B-12.1\(a\)](#), for situations with a dormant developer. [Flinn v. Amboy Nat. Bank, 436 N.J. Super. 274, 93 A.3d 422, 2014 N.J. Super. LEXIS 93 \(App.Div. 2014\)](#).

### **Real Property Law: Purchase & Sale: Interstate Land Sales Full Disclosure Act**

Consumers' amended complaint sufficiently alleged violations of N.J. Stat. Ann. § [45:22A-37\(a\)](#) in the form of misleading exhibits and formulas within the public offering statement regarding tax liabilities to warrant leave to amend being granted under [Fed. R. Civ. P. 15\(a\)](#). [Skolnick v. Tarragon Corp. \(In re Tarragon Corp.\), 2012 Bankr. LEXIS 3874 \(Bankr. D.N.J. Aug. 22, 2012\)](#).

### **Real Property Law: Purchase & Sale: Remedies: Duty to Disclose**

Planned Real Estate Development Full Disclosure Act did not create a duty on the part of a developer to notify the home buyers that an angry adjoining landowner had shown signs of planning to make life miserable for them after they moved in. [Levine v. Kramer Group, 354 N.J. Super. 397, 807 A.2d 264, 2002 N.J. Super. LEXIS 408 \(App.Div. 2002\)](#).

Purchaser who suffered no losses as a result of condominium developer's failure to timely deliver a current public offering statement pursuant to N.J. Stat. Ann. § [45:22A-21](#) et seq. was not entitled to damages, much less double

damages and costs under N.J. Stat. Ann. § [45:22A-37\(a\)](#). *Tung v. Briant Park Homes, Inc.*, 287 N.J. Super. 232, 670 A.2d 1092, 1996 N.J. Super. LEXIS 45 (App.Div. 1996).

### **Real Property Law: Subdivisions: State Regulation**

Condominium association's Second Amended Complaint failed to allege acts of the two individual defendants to plausibly suggest the level of control necessary to hold them liable with the developer. It failed to allege any level of participation on their part, rather only that they were the sole shareholders and/or members of the limited liability company (LLC), and that the LLC was a shareholder in the sponsor entity. These allegations did not rise to the level of direct or indirect participation to hold the individuals liable under the Planned Real Estate Development Full Disclosure Act. [1200 Grand St. Condo. Ass'n v. Tarragon Corp. \(In re Tarragon Corp.\)](#), 2012 Bankr. LEXIS 75 (Bankr. D.N.J. Jan. 10, 2012).

Accepting the allegations as true and in a light most favorable to plaintiff condominium association, defendant limited liability company, as a shareholder with a financial interest in the development and disposition of the units in the condominium complex, may have exerted the requisite control over the developer, rendering itself liable under the New Jersey Planned Real Estate Development Full Disclosure Act. Thus, the Second Amended Complaint gave both a short and plain statement of the claim, as well as particularity as to the foundation of its claims. [1200 Grand St. Condo. Ass'n v. Tarragon Corp. \(In re Tarragon Corp.\)](#), 2012 Bankr. LEXIS 75 (Bankr. D.N.J. Jan. 10, 2012).

Here, plaintiff condominium association did not need to establish fraudulent concealment, and thus the Planned Real Estate Development Full Disclosure Act (PREFDA) claims did not necessarily "hinge on allegations of fraud"; additionally, notwithstanding the court's prior decision, defendant limited liability company fail to introduce any binding case law applying [Fed. R. Civ. P. 9\(b\)](#) to measure the sufficiency of claims under PREFDA, nor was the court aware of such authority. For these reasons, the court would not require that claims brought pursuant to PREFDA meet the heightened pleading requirements of Rule 9(b). [1200 Grand St. Condo. Ass'n v. Tarragon Corp. \(In re Tarragon Corp.\)](#), 2012 Bankr. LEXIS 75 (Bankr. D.N.J. Jan. 10, 2012).

It could be inferred from the line of reasoning that a lender might fall within the purview of the New Jersey Planned Real Estate Development Full Disclosure Act where it exerted "actual or inferential management and promotion of development," that the Third-Party Defendants, by virtue of their positions as officers and directors, and their alleged supervisory roles, would therefore fall within the "control" provisions as well. [1200 Grand Dt. Condominium Assoc. v. Tarragon Corp. \(In re Tarragon Corp.\)](#), 2011 Bankr. LEXIS 1001 (Bankr. D.N.J. Mar. 18, 2011).

### **Torts: Negligence: Defenses: Comparative Negligence: Multiple Parties: Contribution**

It could be inferred from the line of reasoning that a lender might fall within the purview of the New Jersey Planned Real Estate Development Full Disclosure Act where it exerted "actual or inferential management and promotion of development," that the Third-Party Defendants, by virtue of their positions as officers and directors, and their alleged supervisory roles, would therefore fall within the "control" provisions as well. [1200 Grand Dt. Condominium Assoc. v. Tarragon Corp. \(In re Tarragon Corp.\)](#), 2011 Bankr. LEXIS 1001 (Bankr. D.N.J. Mar. 18, 2011).

### **Notes to Unpublished Decisions**

#### **Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: State Regulation**

#### **Real Property Law: Purchase & Sale: Interstate Land Sales Full Disclosure Act**

#### **Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: State Regulation**

*Unpublished decision:* Property buyer's fraud; New Jersey Consumer Fraud Act, and Planned Real Estate Development Full Disclosure Act claims based on property seller's affirmative misrepresentations failed because she did not establish that seller's agent made statement of fact that was false. [Phoenix v. United States Homes Corp., 628 Fed. Appx. 825, 2015 U.S. App. LEXIS 18200 \(3d Cir. N.J. 2015\).](#)

**Real Property Law: Purchase & Sale: Interstate Land Sales Full Disclosure Act**

*Unpublished decision:* Property buyer's fraud; New Jersey Consumer Fraud Act, and Planned Real Estate Development Full Disclosure Act claims based on property seller's affirmative misrepresentations failed because she did not establish that seller's agent made statement of fact that was false. [Phoenix v. United States Homes Corp., 628 Fed. Appx. 825, 2015 U.S. App. LEXIS 18200 \(3d Cir. N.J. 2015\).](#)

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## N.J. Stat. § 45:22A-38

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### § 45:22A-38. Violations; fine; levy and collection

- a. Any person who violates any provision of this act or of a rule adopted under it or any person who in an application for registration filed for registration makes any untrue statement of a material fact or omits to state a material fact shall be fined not less than \$250.00, nor more than \$50,000.00 per violation.
- b. The commissioner, through the agency, may levy and collect the penalties set forth in subsection a. hereof after affording the person alleged to be in violation of this act an opportunity to appear before the commissioner or his designee and to be heard personally or through counsel on the alleged violations and a finding by the commissioner that said person is guilty of the violation. When a penalty so levied by the commissioner has not been satisfied within 30 days of the levy, the penalty may be sued for and recovered by and in the name of the commissioner in a summary proceeding pursuant to the Penalty Enforcement Law ([N.J.S. 2A:58-1](#) et seq.).
- c. The agency may in the interest of justice compromise any civil penalty, if in its determination the gravity of the offense or offenses does not warrant the assessment of the full fine.

### History

L. 1977, c. 419, § 18.

Annotations

### LexisNexis® Notes

### Research References & Practice Aids

#### **Cross References:**

Noncompliance; penalties, see [45:22A-53](#).

Solar collectors on certain roofs, homeowners association authority limited, see [45:22A-48.2](#).

Enforcement, penalties, see [52:27D-141.8](#).

#### **Administrative Code:**

[N.J.A.C. 5:10A-1.1](#) (2013), CHAPTER PROPRIETARY CAMPGROUND FACILITY HEALTH AND SAFETY STANDARDS, Administration and enforcement.

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## N.J. Stat. § 45:22A-39

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-39. Application of act to lands situated in this state**

The provisions of this act shall apply to lands situated in this State whether promoted or advertised within or without the State.

#### **History**

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L. 1977, c. 419, 19.

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## N.J. Stat. § 45:22A-40

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-40. Severability**

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If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

### **History**

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L. 1977, c. 419, 20.

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## N.J. Stat. § 45:22A-41

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-41. Retirement subdivision or community; application of this act**

Any retirement subdivision or community as defined in the Retirement Community Full Disclosure Act, P.L.1969, c. 215 ([C. 45:22A-1](#) et seq.) shall, after the effective date of this act, be deemed for all purposes to be subject to the provisions of this act alone, provided, however, that any portion or section of such retirement community or subdivision registered with the Division of Housing and Urban Renewal prior to the effective date of this act shall remain under the jurisdiction of the Retirement Community Full Disclosure Act.

### **History**

L. 1977, c. 419, 21.

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## N.J. Stat. § 45:22A-42

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-42. Inapplicability of act.**

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The provisions of P.L.1977, c.419 ([C.45:22A-21](#) et seq.), concerning the formation and registration of planned real estate developments, shall not apply to any portion of a planned real estate development which has on the effective date of P.L.1977, c.419 ([C.45:22A-21](#) et seq.):

- a. Its building permit or permits; or
- b. Final municipal approval of (1) its site plan or (2), in the case of single or two-family homes or separate lots, its subdivision plat; provided that the land is not valued, assessed and taxed as an agricultural or horticultural use pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 ([C.54:4-23.1](#) et seq.); provided further that this section shall not be construed as applying to conversions or Retirement Subdivisions or Communities as defined in the "Retirement Community Full Disclosure Act," P.L.1969, c.215 ([C.45:22A-1](#) et seq.).

### **History**

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L. 1977, c. 419, 22; amended [2017, c. 106](#), § 3, eff. July 13, 2017.

### Annotations

### **LexisNexis® Notes**

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### **Notes**

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#### **Effective Dates**

Section 9 of L. [2017, c. 106](#) provides: "This act shall take effect immediately, except that paragraphs (1) through (9) of subsection c. of section 6 concerning notice, nominations, ballot content, voting, and vote distribution in executive board elections shall remain inoperative until the first day of the third month next following enactment and shall be applicable to each executive board election on or after that date." Chapter 106, L. 2017, was approved on July 13, 2017.

#### **Amendment Notes**

2017 amendment, by Chapter 106, substituted "The provisions of P.L.1977, c.419 ([C.45:22A-21](#) et seq.), concerning the formation and registration of planned real estate developments, shall" for "This act shall", and "of P.L.1977, c.419 ([C.45:22A-21](#) et seq.)" for "of this act" in the introductory paragraph.

## Case Notes

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### Real Property Law: Common Interest Communities: Homeowners Associations

Amendments to the Planned Real Estate Development Full Disclosure Act, which were enacted in 1993 and address administration and management of planned real estate developments, codified at N.J. Stat. Ann. §§ [45:22A-43](#) to -48, apply to a community association founded before the enactment of the statute and its amendments. [Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 \(App.Div.\)](#), certif. denied, [188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 \(N.J. 2006\)](#), certif. denied, [186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 \(N.J. 2006\)](#), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\)](#).

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## **N.J. Stat. § 45:22A-43**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-43. Organization of association.**

- a. A developer subject to the registration requirements of section 6 of P.L.1977, c.419 ([C.45:22A-26](#)) shall organize or cause to be organized an association whose obligation it shall be to manage the common elements and facilities. The association shall be formed on or before the filing of the master deed or declaration of covenants and restrictions, and may be formed as a for-profit or nonprofit corporation, unincorporated association, or any other form permitted by law. The application of [P.L. 1993, c.30](#) ([C.45:22A-43](#) et seq.) to the association of an existing planned real estate development shall not be limited by:
  - (1) whether the developer has been subject to, or exempted from, the registration requirements of section 6 of P.L.1977, c.419 ([C.45:22A-26](#)); or
  - (2) the development's date of establishment.
- b. Nothing in subsection a. of this section shall be construed to require the registration of a planned real estate development that is not otherwise required to register pursuant to section 6 of P.L.1977, c.419 ([C.45:22A-26](#)).
- c. Membership in the association of a planned real estate development shall be comprised of each owner within the planned real estate development, and may include the developer if the development contains unsold lots, parcels, units, or interests. An association may permit tenant participation in executive board elections, tenant membership in the association, or both. A voting-eligible tenant shall have only the same voting rights as the owner of the unit that the tenant leases, and such voting rights shall be in place of and not in addition to the rights of the owner of the leased unit, except as permitted under paragraph (9) of subsection c. of section 6 of [P.L.2017, c. 106](#) ([C.45:22A-45.2](#)). Pursuant to paragraph (9) of subsection c. of section 6 of [P.L.2017, c. 106](#) ([C.45:22A-45.2](#)), the votes associated with a unit shall not be altered by the participation of voting-eligible tenants.

### **History**

L. [1993, c. 30](#), § 1; amended [2017, c. 106](#), § 4, eff. July 13, 2017.

Annotations

### **LexisNexis® Notes**

### **Notes**

## Effective Dates

Section 9 of L. [2017, c. 106](#) provides: "This act shall take effect immediately, except that paragraphs (1) through (9) of subsection c. of section 6 concerning notice, nominations, ballot content, voting, and vote distribution in executive board elections shall remain inoperative until the first day of the third month next following enactment and shall be applicable to each executive board election on or after that date." Chapter 106, L. 2017, was approved on July 13, 2017.

## Amendment Notes

2017 amendment, by Chapter 106, redesignated former section as a.; and added the last sentence of a. through c.

## Case Notes

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### Real Property Law: Common Interest Communities: Homeowners Associations

Amendments to the Planned Real Estate Development Full Disclosure Act, which were enacted in 1993 and address administration and management of planned real estate developments, apply to a community association founded before the enactment of the statute and its amendments. [Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 \(App.Div.\)](#), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\)](#).

## Research References & Practice Aids

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### Cross References:

Definitions, see [45:22A-23](#).

Election of executive board; powers, see [45:22A-45](#).

Preparation, distribution of explanatory materials and guidelines, see [45:22A-48](#).

Solar collectors on certain roofs, homeowners association authority limited, see [45:22A-48.2](#).

## N.J. Stat. § 45:22A-44

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-44. Powers, functions of association**

- a. Subject to the master deed, declaration of covenants and restrictions or other instruments of creation, the association may do all that it is legally entitled to do under the laws applicable to its form of organization.
- b. The association shall exercise its powers and discharge its functions in a manner that protects and furthers the health, safety and general welfare of the residents of the community.
- c. The association shall provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation.
- d. The association may assert tort claims concerning the common elements and facilities of the development as if the claims were asserted directly by the unit owners individually.

### **History**

L. [1993, c. 30](#), § 2.

Annotations

### **LexisNexis® Notes**

### **Case Notes**

**Civil Procedure: Alternative Dispute Resolution: General Overview**

**Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Association**

**Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Scope of Freedom**

**Real Property Law: Common Interest Communities: Condominiums: Condominium Associations**

**Real Property Law: Common Interest Communities: Homeowners Associations**

**Civil Procedure: Alternative Dispute Resolution: General Overview**

Alternative dispute resolution requirements in the Condominium Act and the Planned Real Estate Development Full Disclosure Act do not prohibit a unit owner or a condominium association from initiating litigation without first

submitting the dispute to alternative dispute resolution, if there are compelling circumstances. [Finderne Heights Condominium Ass'n v. Rabinowitz, 390 N.J. Super. 154, 915 A.2d 16, 2007 N.J. Super. LEXIS 12 \(App.Div. 2007\).](#)

### **Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Association**

Residents' claims against homeowners' association concerning their right to post political signs, use the community room, and have equal access to newsletter were remanded for reconsideration under the proper standard, as expressive rights guarantees of the N.J. Constitution were applicable; on the other hand, adverse rulings against residents on access to financial records, modes of dispute resolution, and association voting criteria were based on reasonable and substantially correct interpretations of statutory standards, applications of the business judgment rule, and assessments of the parties' contractual rights and interests. [Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 \(App.Div. 2006\)](#), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\).](#)

Homeowners' association's actions are subject to constitutional norms, under [N.J. Const. art. I, para. 6](#) and 18, when they impinge on fundamental rights of residents of planned development communities to engage in expressive exercises, and are not insulated from such scrutiny by the business judgment rule or any other like criterion stemming from contractual relationships. [Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 \(App.Div. 2006\)](#), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\).](#)

### **Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Scope of Freedom**

Residents' claims against homeowners' association concerning their right to post political signs, use the community room, and have equal access to newsletter were remanded for reconsideration under the proper standard, as expressive rights guarantees of the N.J. Constitution were applicable; on the other hand, adverse rulings against residents on access to financial records, modes of dispute resolution, and association voting criteria were based on reasonable and substantially correct interpretations of statutory standards, applications of the business judgment rule, and assessments of the parties' contractual rights and interests. [Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 \(App.Div. 2006\)](#), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\).](#)

Homeowners' association's actions are subject to constitutional norms, under [N.J. Const. art. I, para. 6](#) and 18, when they impinge on fundamental rights of residents of planned development communities to engage in expressive exercises, and are not insulated from such scrutiny by the business judgment rule or any other like criterion stemming from contractual relationships. [Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 \(App.Div. 2006\)](#), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\).](#)

### **Real Property Law: Common Interest Communities: Condominiums: Condominium Associations**

Alternative dispute resolution requirements in the Condominium Act and the Planned Real Estate Development Full Disclosure Act do not prohibit a unit owner or a condominium association from initiating litigation without first submitting the dispute to alternative dispute resolution, if there are compelling circumstances. [Finderne Heights Condominium Ass'n v. Rabinowitz, 390 N.J. Super. 154, 915 A.2d 16, 2007 N.J. Super. LEXIS 12 \(App.Div. 2007\).](#)

**Real Property Law: Common Interest Communities: Homeowners Associations**

Court affirmed summary judgment against residents of a planned development community on their claim that \$150 deposit required under homeowners' association's alternative dispute resolution (ADR) policy unreasonably denied access to ADR. *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n*, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 (App.Div. 2006), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\)](#).

Court affirmed the lower court's holding that the alternative dispute resolution (ADR) policy of a homeowners' association did not violate [N.J. Stat. Ann. 45:22A-44\(c\)](#); the lower court held that the policy did not withhold ADR from any claims that might be legitimately justiciable and that derivative claims did not fall under the regulation of the statute. *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n*, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 (App.Div. 2006), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\)](#).

Court affirmed summary judgment against residents of a planned development community on their claim against homeowners' association for access to financial records; lower court held that the business judgment rule applied to the association's requirement that a majority of the board approve requests for confidential documents and that the board did not abuse its discretion in denying request. *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n*, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 (App.Div. 2006), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\)](#).

Court affirmed the lower court's invalidation of a \$1,000 "liquidated damages" clause in a confidentiality agreement that members of a community association had to sign in order to obtain the association's voting list. *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n*, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 (App.Div. 2006), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\)](#).

Residents' claims against homeowners' association concerning their right to post political signs, use the community room, and have equal access to newsletter were remanded for reconsideration under the proper standard, as expressive rights guarantees of the N.J. Constitution were applicable; on the other hand, adverse rulings against residents on access to financial records, modes of dispute resolution, and association voting criteria were based on reasonable and substantially correct interpretations of statutory standards, applications of the business judgment rule, and assessments of the parties' contractual rights and interests. *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n*, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 (App.Div. 2006), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\)](#).

Amendments to the Planned Real Estate Development Full Disclosure Act, which were enacted in 1993 and address administration and management of planned real estate developments, apply to a community association founded before the enactment of the statute and its amendments. *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n*, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 (App.Div. 2006), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\)](#).

Homeowners' association's actions are subject to constitutional norms, under [N.J. Const. art. I, para. 6](#) and 18, when they impinge on fundamental rights of residents of planned development communities to engage in expressive exercises, and are not insulated from such scrutiny by the business judgment rule or any other like criterion stemming from contractual relationships. *Committee for a Better Twin Rivers v. Twin Rivers Homeowners'*

Ass'n, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 (App.Div. 2006), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, 192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 (N.J. 2007).

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## **N.J. Stat. § 45:22A-45**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-45. Election of executive board; powers.**

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- a. The form of administration of an association organized pursuant to section 1 of [P.L. 1993, c.30 \(C.45:22A-43\)](#) shall provide for the election of an executive board, elected by the association members, and voting-eligible tenants where applicable, and responsible to the members of the association pursuant to section 4 of [P.L. 1993, c.30 \(C.45:22A-46\)](#), through which the powers of the association shall be exercised and its functions performed.
- b. Subject to the master deed, declaration of covenants and restrictions, bylaws or other instruments of creation, subsection d. of this section, and the laws of the State, the executive board may act in all instances on behalf of the association.
- c. The members of the executive board appointed by the developer shall be liable as fiduciaries to the owners for their acts or omissions.
- d. During control of the executive board by the developer, copies of the annual audit of association funds shall be available for inspection by owners or their authorized representative at the project site.

### **History**

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L. [1993, c. 30](#), § 3; amended [2017, c. 106](#), § 5, eff. July 13, 2017.

Annotations

### **Notes**

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#### **Effective Dates**

Section 9 of L. [2017, c. 106](#) provides: "This act shall take effect immediately, except that paragraphs (1) through (9) of subsection c. of section 6 concerning notice, nominations, ballot content, voting, and vote distribution in executive board elections shall remain inoperative until the first day of the third month next following enactment and shall be applicable to each executive board election on or after that date." Chapter 106, L. 2017, was approved on July 13, 2017.

#### **Amendment Notes**

2017 amendment, by Chapter 106, inserted "the association members, and voting-eligible tenants where applicable," in a.

### **Research References & Practice Aids**

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**Cross References:**

Definitions, see [45:22A-23](#).

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## **N.J. Stat. § 45:22A-45.1**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-45.1. Findings, declarations relative to governance of common interest community associations.**

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The Legislature finds and declares that:

- a. In addition to living under State, county, and municipal government, recent estimates conclude that over one million New Jersey residents currently live under the governance of a common interest community association, such as a condominium, cooperative, or homeowners' association;
- b. The owners and residents of these communities often benefit from minimized maintenance responsibilities and greater assurances that neighboring properties will follow a predictable development scheme;
- c. Along with these benefits, living under a community association also creates the necessity of paying assessments and fees in addition to the State and local taxes that other State residents pay, and requires compliance with property regulations that may be more stringent than those required by municipal government alone;
- d. Because of the significant influence community associations have over the lives of their residents and because community associations are creatures of State law, it is unfair and runs contrary to American democratic values for these communities to be governed by trustees who are not elected in a fair and open manner;
- e. The supplement to "The Planned Real Estate Development Full Disclosure Act" ("PREFDA"), P.L.1977, c.419 ([C.45:22A-21](#) et seq.), specifically, [P.L.1993, c.30](#) ([C.45:22A-43](#) et seq.), provided all owners and residents in common interest residential communities with specific rights and protections. These rights and protections exist regardless of whether a developer established the community prior to the effective date of PREFDA. The supplement was not specific in declaring that all unit owners were members of the association or in recognizing that, along with certain specific tenant residents, all unit owners were entitled to participate fully in elections of members of the executive board;
- f. Unit owners living in community associations should have the right to nominate candidates, run for, freely elect, and be elected to the executive boards that govern the communities; and
- g. It is necessary and in the public interest for the Legislature to enact legislation to amend PREFDA in order to:
  - (1) Establish that all unit owners are members of the association and provide basic election participation rights for certain residents of common interest communities, including the right of resident owners in good standing to nominate any unit owner in good standing as a candidate for any position on the executive board, run, appear on the ballot, and be elected to any executive board position, in every executive board election, and for those rights to apply regardless of the date of a community's establishment; and
  - (2) Establish that, except under the very limited exceptions provided, a person may not serve on an executive board unless elected through a process consistent with the provisions of PREFDA.

## History

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L. [2017, c. 106](#), § 1, eff. July 13, 2017.

Annotations

## Notes

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### Effective Dates

Section 9 of L. [2017, c. 106](#) provides: "This act shall take effect immediately, except that paragraphs (1) through (9) of subsection c. of section 6 concerning notice, nominations, ballot content, voting, and vote distribution in executive board elections shall remain inoperative until the first day of the third month next following enactment and shall be applicable to each executive board election on or after that date." Chapter 106, L. 2017, was approved on July 13, 2017.

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## **N.J. Stat. § 45:22A-45.2**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-45.2. Executive board elections**

- a.** An association shall hold executive board elections in accordance with the provisions of its governing documents, including validly-adopted executive board rules, that do not conflict with the provisions of this section. If such documents do not set a specific time or interval, the elections shall be held at two-year intervals. If an association has not held an election in compliance with its governing documents in two or more years, it shall hold an election within 90 days of the submission to any current executive board member of a petition signed by 25 or more percent of association members in good standing, but in no event less than the number of association members required to meet the quorum requirements set forth in the governing documents. If an association has no executive board members and association members fail to act on petition or by majority, any association member or group thereof, at common expense and, upon written notice to all owners, may petition a court of competent jurisdiction for authority to act temporarily in the interests of the association and to organize and hold an election within 90 days of the date of the court order. Any proxies used by an association must contain a prominent notice that use of the proxy is voluntary on the part of the granting owner, that it can be revoked at any time before the proxy holder casts a vote, and that absentee ballots are available. An association may not use proxies for an executive board member election without also making absentee ballots available.
- b.** An association of a development with fewer than 50 units shall ensure an executive board election system that includes: (1) the provision of election notice, (2) the provision of the ability to nominate and vote for any association member in good standing, (3) the provision of an opportunity to review any candidacy qualifications such that the owner is permitted to be a candidate for election to the board, (4) the provision of ready access to information on when and how to vote, and (5) the counting of ballots and verification of eligibility to vote, all of which shall be conducted in a non-fraudulent manner. Such association shall also be subject to the requirements of paragraphs (9) and (10) of subsection c. of this section.
- c.** In order to ensure open and fair executive board elections, the following provisions of this subsection shall apply to all associations of developments with 50 or more units, except for paragraphs (9) and (10), which shall apply to associations of all developments.
  - (1)** An association shall not provide for a term of an executive board member to be for more than 4 years, provided that nothing shall prevent an executive board member from continuing to serve until his or her successor is duly qualified and elected.
  - (2)** An association shall not prohibit a voting-eligible tenant, where applicable, from casting a vote allocated to a unit if the bylaws otherwise permit tenant participation in an election of executive board members nor prohibit an individual acting pursuant to a valid power of attorney or proxy from casting a vote.
  - (3)** An association shall provide written notice to all association members no later than 30 days prior to the date for the mailing of the notice of the meeting set forth in paragraph (5) of this subsection that informs association members of the right to nominate themselves or other association members in good standing for candidacy to serve on the executive board.
  - (4)** An association, subject to the exceptions under subsection f. of this section, shall not prohibit an association member in good standing from nominating himself or herself, or any other association

member in good standing as a candidate for any membership position on the executive board, so long as the nomination is made prior to the mailing of ballots or proxies to the association members, which mailing shall occur no earlier than: (a) the day following the expiration of the time period within which candidates must be nominated, or (b) where no expiration date is set forth for nomination of candidates, then the business day prior to the mailing of the notice of the election, required pursuant to paragraph (5) of this subsection. The period for submitting nominations shall not be less than 14 days from the mailing of the request for nominations.

- (5) An association shall provide association members written notice of an election by personal delivery, mail, or electronic means, no less than 14 nor more than 60 days prior to the meeting at which an election of executive board members is scheduled. This notice shall include a proxy ballot and an absentee ballot, unless prohibited by the bylaws, which ballots shall list in alphabetical order by last name the names of all candidates nominated pursuant to paragraph (4) of this subsection. In the case of mailing, the notice shall be effective when deposited in the mailbox with proper postage. The notice may only be sent by electronic means if either (a) the affected association member, or voting-eligible tenant where applicable, has agreed in writing to accept notice by electronic means; or (b) the governing documents permit electronic notices, provided another form of voting by absentee balloting or proxy voting is available.
- (6) An association shall use ballots, whether paper ballots or electronic ballots, that contain the names of all persons nominated as a candidate for the executive board.
- (7) An association shall not prohibit any association member in good standing, or voting-eligible tenant where applicable, subject to the exceptions under subsection f. of this section and any limitation on the number of votes per unit permitted under paragraph (9) of this subsection, from voting for any nominated candidate in an executive board election.
- (8) An association shall not prevent voting for an executive board member by electronic means where the executive board determines to employ voting in such manner and an association member, or voting-eligible tenant where applicable, consents to casting a vote in such manner.
- (9) An association shall not provide for an allocation of votes other than one vote for each unit, or such larger number of equal votes per unit as may be set forth in the governing documents of the association, except (a) where the bylaws or other governing document provide for the voting interest to be proportional to a unit's value or size, (b) where the governing documents permit more than one vote to be cast by each unit on an equal basis or a basis consistent with each unit's value or size, or (c) where the governing documents do not set forth the number of votes that may be cast by each unit, then in accordance with a rule adopted by the executive board that allows more than one vote to be cast by each unit, provided such rule assigns an equal number of votes to each unit.
- (10) Election procedures shall not be established or administered in any way to prohibit participation by the residents of low or moderate income housing units.

d. Initial executive board elections in condominium associations, governed under the "Condominium Act," P.L.1969, c.257 ([C.46:8B-1](#) et seq.), shall follow the notice timeline under subsection b. of section 2 of P.L.1979, c.157 ([C.46:8B-12.1](#)), and shall not be subject to this section.

e. Whether or not formed as a nonprofit corporation, associations of developments of 50 or more units shall conform to the requirements of the "New Jersey Nonprofit Corporation Act," P.L.1983, c.127 ([N.J.S. 15A:1-1](#) et seq.) regarding the counting of ballots.

f.

- (1) It shall be permissible for the bylaws of the association to provide:
  - (a) for the association members, and voting-eligible tenants where applicable, of a planned real estate development with units of different use types to nominate and vote for some members of the executive board and, pursuant to the mixed-use development's governing documents, have other

members of the executive board nominated and elected by association members and voting-eligible tenants of units of a different use type;

- (b) for the association members, and voting-eligible tenants where applicable, of a planned real estate development to nominate and vote only for some members of the executive board based upon a distribution that allocates votes with approximate proportionality to the number, value, or size of units located in certain geographical areas within the development;
- (c) for a limitation on the number of executive board members nominated and elected by only certain association members, and voting-eligible tenants where applicable, if that limit is based upon a classification intended to further the election of one or more executive board members by the association members, and voting-eligible tenants where applicable, of affordable housing units that represent a minority of the units in a planned real estate development;
- (d) for the association members, and voting-eligible tenants where applicable, of a planned real estate development to nominate and vote for some members of the executive board and, pursuant to the governing documents, have other members of the executive board nominated and elected by the association members, and voting-eligible tenants where applicable, of one or more separate developments, so long as each development's voting weight is approximately proportional, based on the number, value, or size of the units; and
- (e) that, except for executive board members serving as representatives of the developer during the period prior to surrender of control to the owners pursuant to section 5 of [P.L. 1993, c. 30 \(C.45:22A-47\)](#), not more than one owner, entity-owner representative, or voting-eligible tenant where applicable, from a single unit may serve on the governing board simultaneously;

(2) The executive board of an umbrella or master association that does not directly contain units need not be elected by individuals who are association members, and voting-eligible tenants where applicable, with units within the geographical area of the umbrella or master association, provided the members of the executive board serve as executive board members of another planned real estate development executive board, and have been nominated and elected by the association members, and voting-eligible tenants where applicable, with units in that planned real estate development, in compliance with this section.

(3) Except with regard to a planned real estate development containing fewer than 50 units, and any appointment by the developer permitted pursuant to section 5 of [P.L. 1993, c. 30 \(C.45:22A-47\)](#), an association shall:

- (a) not allow a person to take an executive board position through appointment, provided that nothing herein shall prevent the executive board members of an association from filling a vacancy in the executive board created by resignation, death, failure to maintain any reasonable qualification, including maintaining good standing, to be an executive board member or by removal following a vote in favor of removal open to all association members in accordance with the terms of the bylaws; and
- (b) ensure that, in order to serve on the executive board, a person shall be elected through a process that does not conflict with the provisions of this section.

## History

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L. [2017, c. 106](#), § 6, eff. July 13, 2017.

Annotations

## Notes

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### **Effective Dates**

Section 9 of L. [2017, c. 106](#) provides: "This act shall take effect immediately, except that paragraphs (1) through (9) of subsection c. of section 6 concerning notice, nominations, ballot content, voting, and vote distribution in executive board elections shall remain inoperative until the first day of the third month next following enactment and shall be applicable to each executive board election on or after that date." Chapter 106, L. 2017, was approved on July 13, 2017.

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## N.J. Stat. § 45:22A-46

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

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### **§ 45:22A-46. Bylaws; requirements; amendments.**

The bylaws of the association, which shall initially be recorded with the master deed shall include, in addition to any other lawful provisions, the following:

- a. A requirement that all meetings of the executive board, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance by all association members, and voting-eligible tenants where applicable, and adequate notice of any such meeting shall be given to all association members, and voting-eligible tenants where applicable, in such manner as the bylaws shall prescribe; except that the executive board may exclude or restrict attendance at those meetings, or portions of meetings, dealing with (1) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; (2) any pending or anticipated litigation or contract negotiations; (3) any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer, or (4) any matter involving the employment, promotion, discipline or dismissal of a specific officer or employee of the association. At each meeting required under this subsection to be open to all association members, and voting-eligible tenants where applicable, the participation of unit association members, and voting-eligible tenants where applicable, in the proceedings or the provision of a public comment session shall be at the discretion of the executive board, minutes of the proceedings shall be taken, and copies of those minutes shall be made available to all association members, and voting-eligible tenants where applicable, before the next open meeting.
- b. The method of calling meetings of association members, and voting-eligible tenants where applicable, the percentage of association members, and voting-eligible tenants where applicable, or voting rights required to make decisions and to constitute a quorum. The bylaws may, nevertheless, provide that an individual association member, and a voting-eligible tenant where applicable, may waive notice of meetings in writing, or may act by written agreement without meetings.
- c. The manner of collecting from owners their respective shares of common expenses and the method of distribution to the owners of their respective shares of common surplus or such other application of common surplus as may be duly authorized by the bylaws.
- d.
  - (1) The method by which the bylaws may be amended, provided that no amendment shall be effective until recorded in the same office as the then existing bylaws. The bylaws may also provide a method for the adoption, amendment and enforcement of reasonable administrative rules and regulations relating to the operation, use, maintenance and enjoyment of the units and of the common elements, including limited common elements.
  - (2) If association bylaws provide for no method of their amendment by a vote of the association members open to all association members, or only allow association members to amend the bylaws through a majority vote exceeding a two-thirds majority, then the association members may amend the bylaws by an affirmative vote of a majority of the total authorized votes in the association. If the bylaws do not provide for a method by which the association members may call

a meeting of the association members to conduct a vote to amend the bylaws or do not contain provisions concerning the subject matter of subparagraphs (a) through (f) of this paragraph, then a vote concerning an amendment to the bylaws shall be conducted as follows:

- (a) fifteen percent of the association members may request a meeting of the association's membership by executing a document requesting that a special meeting of the association membership be held, or if the annual meeting of the association membership is scheduled to occur within 60 days of the date of the request, then the amendment vote shall be held at the annual meeting;
- (b) if the vote is not scheduled to take place at the annual meeting of the association, the executive board shall schedule the special meeting of the association membership to occur within 60 days of the receipt of the request. Notice of the meeting shall be provided to the association members and voting-eligible tenants, where applicable, at least 14 days prior to the date of the meeting. The special meeting shall be held at a reasonable time that is likely to permit most association members to attend;
- (c) the language of the proposed amendment shall be unambiguous and consistent with applicable law and with the provisions of the bylaws that are not proposed to be amended, and if not in such condition shall be revised to satisfy that requirement. Upon satisfaction of this requirement, the amendment shall be mailed, hand-delivered or, if the bylaws permit, electronically delivered, together with the notice of the meeting to the association membership at least 10 days prior to the meeting;
- (d) if permitted by the association's bylaws, the notice of the meeting shall include a proxy ballot or absentee ballot with instructions for the return of same, which instructions shall permit facsimile or electronic mail delivery of the proxy ballot or absentee ballot to the association and shall not require receipt of the proxy or absentee ballot more than one business day prior to the meeting;
- (e) if a sufficient number of ballots or proxies are not received at the special or annual meeting to conclusively determine that the proposed amendment has been approved or rejected, the meeting shall be adjourned for a period of 30 days, or such longer period as approved by the association membership by approval of a motion to extend the vote concerning the amendment, but in no event for longer than 11 months from when the notice of the meeting was sent, and all proxies or ballots received prior to the extended date shall remain valid if otherwise valid under the terms of the bylaws; and
- (f) when an amendment is approved, a copy of the approved amendment shall be provided to all association members, and the association shall promptly record the amendment in the county recording office where the bylaws were recorded.

(3) Paragraph (2) of this subsection shall not be construed to require a vote to be held on an amendment to the bylaws that has been voted on in the preceding 12 months of the initial meeting request, made pursuant to subparagraph (a) of paragraph (2) of this subsection.

(4) For the purposes of paragraph (2) of this subsection, the number of total authorized votes in the association shall be based on the whole number of units owned by someone entitled to association membership after subtracting those association members who are ineligible to vote because they are not in good standing.

(5) An executive board shall not amend the bylaws of an association without a vote of the association members open to all association members, as provided in the association's bylaws, or where the bylaws provide for no method of their amendment by a vote of the association members, or only allow association members to amend the bylaws through a majority vote exceeding a two-thirds majority, then an association shall only amend the bylaws pursuant to paragraph (2) of this subsection, except an executive board may amend the bylaws under the following circumstances:

- (a) to the extent necessary to render the bylaws consistent with State, federal or local law; or
- (b) after providing notice to all association members of the proposed amendment, which notice shall include a ballot to reject the proposed amendment. Other than an amendment to render the bylaws consistent with State, federal, or local law, if at least 10 percent of association members vote to reject the amendment within 30 days of its mailing, the amendment shall be deemed defeated.

## History

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L. [1993, c. 30](#), § 4; amended [2017, c. 106](#), § 7, eff. July 13, 2017.

Annotations

## Notes

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### Effective Dates

Section 9 of L. [2017, c. 106](#) provides: "This act shall take effect immediately, except that paragraphs (1) through (9) of subsection c. of section 6 concerning notice, nominations, ballot content, voting, and vote distribution in executive board elections shall remain inoperative until the first day of the third month next following enactment and shall be applicable to each executive board election on or after that date." Chapter 106, L. 2017, was approved on July 13, 2017.

### Amendment Notes

2017 amendment, by Chapter 106, substituted "association members, and voting-eligible tenants where applicable" for "unit owners" and similar language throughout a. and b.; inserted "in writing" in the last sentence of b.; deleted "unit" preceding "owners" twice in c.; redesignated former d. as d.(1); and added d.(2) through d.(5).

## Research References & Practice Aids

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### Cross References:

Election of executive board; powers, see [45:22A-45](#).

## N.J. Stat. § 45:22A-46.1

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### § 45:22A-46.1. Findings, declarations relative to age-restricted communities

The Legislature finds and declares:

- a. Age-restricted communities are one of the fastest growing types of developments in the nation and in the State;
- b. Age-restrictions violate federal laws against discrimination in housing, unless certain exceptions are met for age-restricted communities as authorized by federal law;
- c. Homeowners' associations which manage the property in age-restricted communities currently have no methods by which to ensure that the exceptions to federal anti-discrimination provisions will be maintained upon the resales of units in such communities; and
- d. It is necessary and in the public interest for the Legislature to create a method of ensuring compliance by age-restricted communities with federal law.

### **History**

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L. [2008, c. 71](#), § 1, eff. Sept. 6, 2008.

Annotations

### **LexisNexis® Notes**

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### **Research References & Practice Aids**

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#### **Cross References:**

Resale, transfer of dwelling unit, certification of compliance with rules of age-restricted community, see [45:22A-46.2](#).

Certification required for recording deed, see [46:15-6.2](#).

## N.J. Stat. § 45:22A-46.2

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.2. Resale, transfer of dwelling unit, certification of compliance with rules of age-restricted community**

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Notwithstanding any law or governing document to the contrary, the purchaser or grantee by operation of law of a dwelling unit in an age-restricted community shall be required to certify, prior to the resale or transfer by operation of law of a dwelling unit within the community, that the dwelling unit will be occupied by a person of an age that ensures compliance with the "housing for older persons" exception from the federal "Fair Housing Amendments Act of 1988," Pub.L.100-430 (42 U.S.C. §§ 3601 et seq.) for that community as set forth in [section 100.301 of Title 24, Code of Federal Regulations](#). The certification shall be on such form as may be prescribed by the Commissioner of Community Affairs, but shall not exceed one page in length. A copy of the certification shall be provided to the purchaser for recording. For the purpose of [P.L.2008, c.71 \(C.45:22A-46.1 et al.\)](#), "resale" shall mean any sale of a dwelling unit within an age-restricted community, other than the initial sale of the unit made by the developer to a purchaser.

### **History**

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L. [2008, c. 71](#), § 2, eff. Sept. 6, 2008.

Annotations

### **LexisNexis® Notes**

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### **Notes**

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#### **Editor's Note:**

Certification required for recording deed, see [46:15-6.2](#).

## **N.J. Stat. § 45:22A-46.3**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.3. Findings, declarations relative to affordable housing**

The Legislature finds and declares that:

- a. While the cost of housing in New Jersey has declined under currently eroding economic conditions, the cost of both renting and homeownership remains unaffordable to a large percentage of New Jersey residents, including those who make vital contributions to their communities such as teachers, nurses, police officers, firefighters, and the general workforce population;
- b. In recognition of this crisis, Governor Jon S. Corzine has committed to producing and preserving 100,000 units of affordable housing for low-, moderate- and middle-income families and individuals over the next 10 years;
- c. According to the 2000 U.S. Census, 55 percent of these families are one and two person households, many of which are unable to find homes and apartments designed to meet their needs;
- d. While no policy is singularly responsible for current housing conditions, zoning practices have resulted in a lack of land approved for housing which meets the needs of households requiring smaller housing units;
- e. The shortage of affordably priced workforce housing has been exacerbated in recent years by a municipal preference for age-restricted housing which has resulted in an oversupply of age-restricted housing approvals and an inability among the majority of New Jersey's workforce to live near their jobs;
- f. (Deleted by amendment, [P.L.2013, c.253](#).)
- g. Although the maximum municipal percentage of affordable fair share housing which may be met by age-restricted units in a municipality has been reduced from 50 percent to 25 percent under the recently adopted rules of the Council on Affordable Housing, a mechanism is needed to permit an age-restricted development to change to a converted development to meet this rule, and to meet demographic needs; and
- h. Under currently deteriorating national economic conditions, it is appropriate to take immediate action at this time to create the opportunity to increase the production and supply of workforce housing through the conversion of the over-supplied age-restricted market to meet the needs of New Jersey's residents who require smaller, more reasonably priced homes.

### **History**

L. [2009, c. 82](#), § 1, eff. July 2, 2009; amended [2013, c. 253](#), § 36, eff. Jan. 17, 2014.

Annotations

### **LexisNexis® Notes**

## Notes

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### Editor's Note:

State Housing Commission, see [52:27D-329.13](#).

For the substantive rules of the New Jersey Council on Affordable Housing for the period beginning June 2, 2008, see N.J.A.C. 5:97-1.1 et seq.

### Amendment Note:

2013 amendment, by Chapter 253, deleted f., which formerly read: "While the Legislature has created a State Housing Commission, which has been charged with reviewing New Jersey's housing limitations and its future needs to create a balanced housing policy and plan appropriate for all New Jerseyans, it has not yet commenced operation."

### LexisNexis ® Notes

## Case Notes

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### Governments: Local Governments: Duties & Powers

### Public Health & Welfare Law: Housing & Public Buildings: Low Income Housing

### Governments: Local Governments: Duties & Powers

In a township's declaratory judgment action seeking a declaration addressing its affordable housing obligations, the court imposed a fair share methodology and determined that the township's pre-credited and uncapped fair share of the region's prospective need obligation was 1,533 units. [In re Township of South Brunswick, 448 N.J. Super. 441, 153 A.3d 981, 2016 N.J. Super. LEXIS 161 \(Law Div. 2016\)](#).

### Public Health & Welfare Law: Housing & Public Buildings: Low Income Housing

In a township's declaratory judgment action seeking a declaration addressing its affordable housing obligations, the court imposed a fair share methodology and determined that the township's pre-credited and uncapped fair share of the region's prospective need obligation was 1,533 units. [In re Township of South Brunswick, 448 N.J. Super. 441, 153 A.3d 981, 2016 N.J. Super. LEXIS 161 \(Law Div. 2016\)](#).

## Research References & Practice Aids

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### LexisNexis ® Notes

### Cross References:

Definitions relative to affordable housing, see [45:22A-46.4](#).

Conditions for change to a converted development, see [45:22A-46.5](#).

Application to change to a converted development, see [45:22A-46.6](#).

Completed application, decision, see [45:22A-46.9](#).

Submission of application to approving board, see [45:22A-46.11](#).

Development approvals deemed vested, see [45:22A-46.12](#).

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## N.J. Stat. § 45:22A-46.4

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.4. Definitions relative to affordable housing**

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As used in [P.L.2009, c.82 \(C.45:22A-46.3 et seq.\)](#):

“Affordable” means a sales price or rent which meets the criteria for low income or moderate income housing, as defined in section 4 of P.L.1985, c.222 ([C.52:27D-304](#)).

“Approving board” means the municipal or regional planning board, zoning board of adjustment, or joint land use board that issued the initial site plan or subdivision approvals for the given age-restricted development.

“Age-restricted development” means a community that complies with the “housing for older persons” exception from the federal “Fair Housing Amendments Act of 1988,” Pub.L.100-430 (42 U.S.C. §§ 3601 et seq.) for that community as set forth in [section 100.301 of Title 24, Code of Federal Regulations](#).

“Attached housing” means housing units that share a common wall.

“Converted development” means a proposed age-restricted development that will be marketed instead with no age restrictions.

“Department” means the Department of Community Affairs.

“Developer” means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

“Floor area ratio” means the floor area of all buildings and structures on a lot divided by the lot area.

“Fair share plan” means the plan that describes the mechanisms and the funding sources, if applicable, by which a municipality proposes to address its affordable housing obligation as established in the housing element, and includes the draft ordinances necessary to implement that plan in accordance with section 10 of P.L.1985, c.222 ([C.52:27D-310](#)) and the regulations adopted by the Council on Affordable Housing to effectuate that section.

“Final approval” has the same meaning as defined in the “Municipal Land Use Law,” P.L.1975, c.291 ([C.40:55D-1 et seq.](#)).

“Municipality” means any city, borough, town, township, or village.

“Non-restricted status” means the status of an age-restricted development that has received approval to become a converted development.

“Preliminary approval” has the same meaning as defined in the “Municipal Land Use Law,” P.L.1975, c.291 ([C.40:55D-1 et seq.](#)).

“Residential Site Improvement Standards” means the technical site standards promulgated by the Commissioner of Community Affairs pursuant to the authority of [P.L. 1993, c.32 \(C.40:55D-40.1 et seq.\)](#).

### **History**

L. [2009, c. 82](#), § 2, eff. July 2, 2009.

Annotations

## LexisNexis® Notes

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### Notes

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#### OLS Corrections:

Pursuant to [R.S.1:3-1](#), the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected technical errors in L. [2009, c. 82](#), § 2.

#### Editor's Note:

For the substantive rules of the New Jersey Council on Affordable Housing for the period beginning June 2, 2008, see N.J.A.C. 5:97-1.1 et seq.

New Jersey Residential Site Improvement Standards, see [N.J.A.C. 5:21-1.1](#) et seq.

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## **N.J. Stat. § 45:22A-46.5**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.5. Conditions for change to a converted development**

- a. During the period of time set forth in section 9 of [P.L.2009, c.82 \(C.45:22A-46.1\)](#), any age-restricted development shall be eligible to be changed to a converted development, pending approving board approval, provided that the development meets all of the following conditions:
  - (1) preliminary or final approval for construction of the development has been granted prior to the effective date [July 2, 2009] of [P.L.2009, c.82 \(C.45:22A-46.3 et seq.\)](#);
  - (2) the developer of the age-restricted development is not holding a deposit for, or has not conveyed, any dwelling unit within the development;
  - (3) the developer of the age-restricted development agrees that 20 percent of the units in the development will be provided as affordable units in accordance with regulations promulgated by the Council on Affordable Housing pursuant to the "Fair Housing Act," P.L.1985, c.222 ([C.52:27D-301](#) et al.).
- b. Any housing unit which is provided under the provisions of [P.L.2009, c.82 \(C.45:22A-46.3 et seq.\)](#), and which is affordable to households of low- and moderate income, shall automatically become part of a municipal fair share plan, if applicable, and as such shall be eligible for credits to meet the municipality's obligation for affordable housing pursuant to the "Fair Housing Act," P.L.1985, c. 222 ([C.52:27D-301](#) et al.).
- c. No affordable housing units complying with applicable Council on Affordable Housing standards or market-rate housing units associated with such a converted development shall be construed as generating any fair share affordable housing obligation for a municipality.

### **History**

L. [2009, c. 82](#), § 3, eff. July 2, 2009.

Annotations

### **LexisNexis® Notes**

#### **Notes**

#### **Publisher's Note:**

The bracketed material was added by the Publisher to provide a reference.

#### **Editor's Note:**

L. 2009, c. 82, as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Senate Bill No. 2577) earlier in the session. The Governor's recommendations for this section deleted "an amount not exceeding" preceding "20 percent" in a.(3).

For the substantive rules of the New Jersey Council on Affordable Housing for the period beginning June 2, 2008, see N.J.A.C. 5:97-1.1 et seq.

## LexisNexis® Notes

### Case Notes

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#### Public Health & Welfare Law: Housing & Public Buildings: General Overview

#### Real Property Law: Zoning & Land Use: Administrative Procedure

#### Public Health & Welfare Law: Housing & Public Buildings: General Overview

Planning board's denial of plaintiff's application for conversion from age-restricted units to nonage restricted units was unreasonable, as plaintiff established the requirements for conversion under N.J. Stat. Ann. § [45:22A-46.6\(b\)](#), and the board, having granted preliminary approval of plaintiff's project, could not claim that plaintiff's failure to satisfy the conditions for final approval precluded it from applying for conversion. *Heritage at Towne Lake, LLC v. Planning Bd. of Borough of Sayreville*, 422 N.J. Super. 75, 26 A.3d 1071, 2010 N.J. Super. LEXIS 254 (Law Div. 2010).

#### Real Property Law: Zoning & Land Use: Administrative Procedure

Planning board's denial of plaintiff's application for conversion from age-restricted units to nonage restricted units was unreasonable, as plaintiff established the requirements for conversion under N.J. Stat. Ann. § [45:22A-46.6\(b\)](#), and the board, having granted preliminary approval of plaintiff's project, could not claim that plaintiff's failure to satisfy the conditions for final approval precluded it from applying for conversion. *Heritage at Towne Lake, LLC v. Planning Bd. of Borough of Sayreville*, 422 N.J. Super. 75, 26 A.3d 1071, 2010 N.J. Super. LEXIS 254 (Law Div. 2010).

## **N.J. Stat. § 45:22A-46.6**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.6. Application to change to a converted development**

- a. A developer seeking to change an age-restricted development approval to a converted development approval shall file an application with the approving board seeking an amendment to the previously granted approvals requesting the authority to develop the land as a converted development. At such time, the developer shall also file a copy of said notice with the municipal clerk of the municipality in which the development is located and the developer shall provide notice prior to a hearing on the application in the manner prescribed by section 7.1 of P.L.1975, c.291 ([C.40:55D-12](#)).
- (1) No application for an amended approval seeking the authority to construct a converted development shall be considered a “use variance” or other “d” variance” application pursuant to subsection d. of section 57 of P.L.1975, c.291 ([C.40:55D-70](#)). Both planning boards that initially granted approvals for the age-restricted development and zoning boards of adjustment that initially granted approvals for the age-restricted development shall have the legal authority to grant amended approvals for a converted development without the need to seek relief pursuant to subsection d. of section 57 of P.L.1975, c.291 ([C.40:55D-70](#)), it being the intent of this act that such converted developments are to be considered permitted uses in the zoning district in which they are located.
- b. Applications seeking amended approval for a converted development shall include documentation that all of the following site improvement and infrastructure requirements have been met:
  - (1) the site meets the Residential Site Improvement Standards parking requirement for the residential land uses in a converted development as established pursuant to [N.J.A.C.5:21-4.14](#) through -4.16;
  - (2) the recreation improvements and other amenities to be constructed on the site have been revised, as needed, to meet the needs of a converted development;
  - (3) the water supply system is adequate, as determined pursuant to [N.J.A.C.5:21-5.1](#), to meet the needs of a converted development;
  - (4) the capacity of the sanitary sewer system is adequate to meet the projected flow requirements of a converted development pursuant to [N.J.A.C.7:14A-23.3](#);
  - (5) if additional water supply or sewer capacity is needed and the developer is unable to obtain additional supply or capacity, the number of dwelling units in the development has been reduced accordingly;
  - (6) if additional parking is needed, and the developer is unable to provide the required parking, the number of dwelling units in the development has been reduced accordingly; and
  - (7) if additional parking is provided and increases the amount of impervious cover by more than one percent, the storm water system calculations and improvements have been revised accordingly, except that solar panels shall not be included in any calculation of impervious surface or impervious cover. As used in this paragraph, “solar panel” means an elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array.

c. If the approving board determines that the requirements of [P.L.2009, c.82](#) ([C.45:22A-46.3](#) et seq.) have been satisfied, and the conversion can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance, the application for the conversion shall be approved.

## History

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L. [2009, c. 82](#), § 4, eff. July 2, 2009; amended [2010, c. 4](#), § 11, eff. Apr. 22, 2010.

Annotations

## LexisNexis® Notes

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### Notes

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#### OLS Corrections:

Pursuant to [R.S.1:3-1](#), the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, substituted “requirements” for “requirement” in subsection c. and corrected additional technical errors in L. [2009, c. 82](#), § 4.

#### Editor's Note:

L. [2009, c. 82](#), as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Senate Bill No. 2577) earlier in the session. The Governor's recommendations included the addition of subsection c. to this section.

#### Amendment Note:

2010 amendment, by Chapter 4, in b.(7), added the second sentence, and added “except that solar panels shall not be included in any calculation of impervious surface or impervious cover” to the first sentence.

## LexisNexis® Notes

## Case Notes

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### Public Health & Welfare Law: Housing & Public Buildings: General Overview

### Real Property Law: Zoning & Land Use: Administrative Procedure

### Public Health & Welfare Law: Housing & Public Buildings: General Overview

Planning board's denial of plaintiff's application for conversion from age-restricted units to nonage restricted units was unreasonable, as plaintiff established the requirements for conversion under N.J. Stat. Ann. § [45:22A-46.6\(b\)](#), and the board, having granted preliminary approval of plaintiff's project, could not claim that plaintiff's failure to satisfy the conditions for final approval precluded it from applying for conversion. [Heritage at Towne Lake, LLC v.](#)

[Planning Bd. of Borough of Sayreville, 422 N.J. Super. 75, 26 A.3d 1071, 2010 N.J. Super. LEXIS 254 \(Law Div. 2010\).](#)

## **Real Property Law: Zoning & Land Use: Administrative Procedure**

Planning board's denial of plaintiff's application for conversion from age-restricted units to nonage restricted units was unreasonable, as plaintiff established the requirements for conversion under N.J. Stat. Ann. § [45:22A-46.6\(b\)](#), and the board, having granted preliminary approval of plaintiff's project, could not claim that plaintiff's failure to satisfy the conditions for final approval precluded it from applying for conversion. [Heritage at Towne Lake, LLC v. Planning Bd. of Borough of Sayreville, 422 N.J. Super. 75, 26 A.3d 1071, 2010 N.J. Super. LEXIS 254 \(Law Div. 2010\).](#)

## **Research References & Practice Aids**

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### **LexisNexis® Notes**

### **Cross References:**

Completed application, decision, see [45:22A-46.9](#).

Submission of application to approving board, see [45:22A-46.11](#).

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## **N.J. Stat. § 45:22A-46.7**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.7. Conformance of unit in converted development to [C.52:27D-119 et seq](#)**

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A unit in a converted development shall conform to all requirements imposed pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 ([C.52:27D-119 et seq.](#)). It shall also conform to any requirements for, and limitations on, size and square footage imposed pursuant to a preliminary approval. However, any floor plans of the dwelling units may be revised without requiring any further approving board approval or review.

### **History**

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L. [2009, c. 82](#), § 5, eff. July 2, 2009.

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## **N.J. Stat. § 45:22A-46.8**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.8. Revision of layout, site plan permitted**

- a.** In the case of an age-restricted development which is being changed to a converted development, the layout of a subdivision or site plan approved pursuant to the "Municipal Land Use Law," P.L.1975, c.291 ([C.40:55D-1](#) et seq.) may be reasonably revised to accommodate additional parking, different recreation improvements and other amenities, infrastructure enhancements, a needed reduction in the number of units, height requirements, revision to dwelling footprints that do not modify square footage of the development or the individual dwellings, or a needed change to construct the affordable units as attached housing.
- b.** In order to construct the affordable units as attached housing, to meet accessibility requirements, or provide them as rental units, the affordable units may be constructed in one section of the development with a separate management entity if such a management entity is required due to the nature of the development.
- c.** The size, height, floor area ratio, number of bedrooms and total square footage of buildings established as part of a preliminary or final approval for an age-restricted development shall not be increased, but may be decreased for a converted development, except that the number of bedrooms for the affordable units only may be increased within the footprint to meet the bedroom distribution requirements as established in the Uniform Housing Affordability Controls.

### **History**

L. [2009, c. 82](#), § 6, eff. July 2, 2009.

Annotations

### **LexisNexis® Notes**

### **Notes**

#### **Editor's Note:**

Uniform Housing Affordability Controls, see [N.J.A.C. 5:80-26.1](#) et seq.; for bedroom distribution, see [N.J.A.C. 5:80-26.3](#).

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## **N.J. Stat. § 45:22A-46.9**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.9. Completed application, decision**

- a. Within 30 days after the submission of an amended application pursuant to this act, the approving board shall advise the applicant in writing whether the amended application is complete, with completeness to be determined based upon whether the applicant has submitted documentation addressing the issues described in section 4 of [P.L.2009, c.82 \(C.45:22A-46.6\)](#). If no such writing asserting incompleteness for any such reason is provided to the applicant within the 30-day period, the application shall be deemed complete for purposes of review by the approving board.
- b. The approving board shall render a decision on an application for a converted development within 60 days of a determination of application completeness, unless the time frame is extended by the applicant. If no such decision is rendered by the approving board within the time period, including extensions, the application shall be deemed approved and the applicant shall in such a case follow the procedures set forth in section 5 of P.L.1985, c.516 ([C.40:55D-10.4](#)).
- c. Applicants seeking approval for a converted development pursuant to [P.L.2009, c.82 \(C.45:22A-46.3 et seq.\)](#) shall not be charged application fees, although reasonable escrow fees may be charged pursuant to section 13 of [P.L.1991, c.256 \(C.40:55D-53.2\)](#).

### **History**

L. [2009, c. 82](#), § 7, eff. July 2, 2009.

Annotations

### **LexisNexis® Notes**

### **Notes**

#### **OLS Corrections:**

Pursuant to [R.S.1:3-1](#), the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected a technical error in L. [2009, c. 82](#), § 7.

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## N.J. Stat. § 45:22A-46.10

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.10. Filing of revised preliminary subdivision or site plan with municipal engineer**

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After a development has been officially changed to a non-restricted development, the developer shall file a copy of the revised preliminary subdivision or site plan approval with the municipal engineer for review and a determination that all site information is complete. Such information shall be used as the base document for the calculation of any required inspection escrow accounts, and performance and maintenance guaranties in accordance with section 41 of P.L.1975, c.291 ([C.40:55D-53](#)). Any reasonable costs for the review of the revised plans may be charged to the escrow account that the developer posted with the municipality.

### **History**

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L. [2009, c. 82](#), § 8, eff. July 2, 2009.

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## N.J. Stat. § 45:22A-46.11

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.11. Submission of application to approving board**

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An application for approval to change a development from age-restricted to non-restricted status, pursuant to section 4 of [P.L.2009, c.82 \(C.45:22A-46.6\)](#), may be submitted to the approving board at anytime before the first day of the 25th month next following the effective date of [P.L.2009, c.82 \(C.45:22A-46.3 et seq.\)](#); provided, however, that the approving board may extend this time period by an additional 24 months if it finds, at the end of the initial period, that poor economic conditions continue to adversely affect the real estate market in New Jersey.

### **History**

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L. [2009, c. 82](#), § 9, eff. July 2, 2009.

Annotations

### **LexisNexis® Notes**

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### **Research References & Practice Aids**

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#### **Cross References:**

Conditions for change to a converted development, see [45:22A-46.5](#).

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## N.J. Stat. § 45:22A-46.12

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.12. Development approvals deemed vested**

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All development approvals for a development that changes from age-restricted to non-restricted status pursuant to [P.L.2009, c.82](#) ([C.45:22A-46.3](#) et seq.) shall be deemed vested in accordance with the “Municipal Land Use Law,” P.L.1975, c.291 ([C.40:55D-1](#) et seq.), and extended as permitted under the “Permit Extension Act of 2008,” [P.L.2008, c.78](#) ([C.40:55D-136.1](#) et seq.). In the case of a prior approval that was not extended as permitted under the “Permit Extension Act of 2008,” the period of vesting and protection shall not be less than 24 months from the date of approval of the application to change to a non-restricted status.

### **History**

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L. [2009, c. 82](#), § 10, eff. July 2, 2009.

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## N.J. Stat. § 45:22A-46.13

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### § 45:22A-46.13. Issuance of resolution memorializing decision; appeal

- a. An approving board shall issue a resolution memorializing its decision on an application for a converted development within the time period set forth in subsection g. of section 6 of P.L.1975, c.291 ([C.40:55D-10](#)). In the event that an approving board denies an application for a converted development or approves an application subject to conditions deemed unsatisfactory to the applicant, the applicant may appeal that determination to the court in a summary manner. Such an appeal shall be filed within 30 days of the applicant's receipt of the resolution issued by the approving board. The notice of appeal shall include the plans and reports, if any, submitted by the applicant to the approving board in support of the request for approval of a converted development, a copy of the transcript of the hearing before the approving board, and any other items that comprise the record before the approving board.
- b. In deciding an appeal, the court shall consider the reasonableness of the decision of the approving board. Upon finding that the conversion should have been approved the court may make an order instructing the board to approve the converted development, along with any reasonable conditions of approval deemed necessary by the court.

### History

L. [2009, c. 82](#), § 11, eff. July 2, 2009.

Annotations

### LexisNexis® Notes

### Notes

#### **Editor's Note:**

L. [2009, c. 82](#), as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Senate Bill No. 2577) earlier in the session. The Governor's recommendations for this section substituted "the reasonableness of the decision of the approving board" for "whether the applicant complied with the criteria contained in section 3 and section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill)" in the first sentence of subsection b.; and in the second sentence of subsection b., substituted "Upon finding that the conversion should have been approved" for "Upon finding that the criteria have been satisfied." See also the editor's notes under [45:22A-46.5](#) and [45:22A-46.6](#).

**LexisNexis® Notes****Case Notes**

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**Public Health & Welfare Law: Housing & Public Buildings: General Overview****Real Property Law: Zoning & Land Use: Administrative Procedure****Public Health & Welfare Law: Housing & Public Buildings: General Overview**

Planning board's denial of plaintiff's application for conversion from age-restricted units to nonage restricted units was unreasonable, as plaintiff established the requirements for conversion under N.J. Stat. Ann. § [45:22A-46.6\(b\)](#), and the board, having granted preliminary approval of plaintiff's project, could not claim that plaintiff's failure to satisfy the conditions for final approval precluded it from applying for conversion. *Heritage at Towne Lake, LLC v. Planning Bd. of Borough of Sayreville*, 422 N.J. Super. 75, 26 A.3d 1071, 2010 N.J. Super. LEXIS 254 (Law Div. 2010).

**Real Property Law: Zoning & Land Use: Administrative Procedure**

Planning board's denial of plaintiff's application for conversion from age-restricted units to nonage restricted units was unreasonable, as plaintiff established the requirements for conversion under N.J. Stat. Ann. § [45:22A-46.6\(b\)](#), and the board, having granted preliminary approval of plaintiff's project, could not claim that plaintiff's failure to satisfy the conditions for final approval precluded it from applying for conversion. *Heritage at Towne Lake, LLC v. Planning Bd. of Borough of Sayreville*, 422 N.J. Super. 75, 26 A.3d 1071, 2010 N.J. Super. LEXIS 254 (Law Div. 2010).

## **N.J. Stat. § 45:22A-46.14**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.14. Preference for occupancy by municipality permitted**

Notwithstanding any law, rule or regulation to the contrary, a municipality that has received substantive certification from the council shall be permitted to give preference for occupancy for up to 50 percent of all available affordable housing units in a converted development to those households having members who work or reside in the municipality.

#### **History**

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L. [2009, c. 82](#), § 12, eff. July 2, 2009.

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## **N.J. Stat. § 45:22A-46.15**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.15. Waiver of affirmative marketing requirements under certain circumstances**

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Under any rental or purchase program implemented to prevent the homelessness of persons who have experienced or may experience the foreclosure and loss of their personal residence, or any program which addresses the needs of low and moderate income households residing within the municipality including, but not limited to, State, federal or local programs, if the persons benefitting from the program are otherwise income qualified to occupy such housing under federal or State law, then affirmative marketing requirements under regulations promulgated to effectuate the "Fair Housing Act," P.L.1985, c.222 ([C.52:27D-301](#) et al.) shall be waived to permit such persons to occupy, rent or purchase the housing units which they may have previously occupied or owned.

### **History**

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L. [2009, c. 82](#), § 13, eff. July 2, 2009.

Annotations

### **LexisNexis® Notes**

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### **Notes**

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#### **Editor's Note:**

For the substantive rules of the New Jersey Council on Affordable Housing for the period beginning June 2, 2008, see N.J.A.C. 5:97-1.1 et seq. Affirmative marketing, see [N.J.A.C. 5:80-26.15](#).

## N.J. Stat. § 45:22A-46.16

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-46.16. Determination of credits granted against fair share obligation**

For the purpose of determining credits to be granted against the fair share obligation of a municipality under the requirements of P.L.1985, c.222 ([C.52:27D-301](#) et al.) and the regulations promulgated to effectuate that act, a housing unit financed in whole or in part through the allocation of federal Low-Income Housing Tax Credits shall be eligible to be credited if the requirements of federal law pursuant to 26 U.S.C. § 42 have been met for that unit. In the event the federal requirements have been met, the provisions of the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency shall not be applied to inhibit or prevent the crediting of the housing unit against the municipal fair share obligation.

### **History**

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L. [2009, c. 82](#), § 14, eff. July 2, 2009.

Annotations

### **LexisNexis® Notes**

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### **Notes**

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#### **Editor's Note:**

For the substantive rules of the New Jersey Council on Affordable Housing for the period beginning June 2, 2008, see N.J.A.C. 5:97-1.1 et seq.

Uniform Housing Affordability Controls, see [N.J.A.C. 5:80-26.1](#) et seq.

## **N.J. Stat. § 45:22A-47**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-47. Surrender of control to owners.**

- a. Irrespective of the time set for developer control of the association provided in the master deed, declaration of covenants and restrictions, or other instruments of creation, control of the association shall be surrendered to the owners in the following manner:

  - (1) Sixty days after conveyance of 25 percent of the lots, parcels, units or interests, not fewer than 25 percent of the members of the executive board shall be elected by the owners, and voting-eligible tenants where applicable.
  - (2) Sixty days after conveyance of 50 percent of the lots, parcels, units or interests, not fewer than 40 percent of the members of the executive board shall be elected by the owners, and voting-eligible tenants where applicable.
  - (3) Sixty days after conveyance of 75 percent of the lots, parcels, units or interests, the developer's control of the executive board shall terminate, at which time the owners, and voting-eligible tenants where applicable, shall elect the entire executive board; except that the developer may retain the selection of one executive board member so long as there are any units remaining unsold in the regular course of business.
- b. The percentages specified in subsection a. of this section shall be calculated upon the basis of the whole number of units entitled to membership in the association. The bylaws of the association shall specify the number or proportion of votes of all units conveyed to owners that shall be required for the election of executive board members. Unless the bylaws provide for an alternate approach to allocating votes pursuant to paragraph (9) of subsection c. of section 6 of [P.L.2017, c.106 \(C.45:22A-45.2\)](#), each unit conveyed to an owner shall be entitled to one vote regardless of the number of association members, and voting-eligible tenants where applicable, residing in a unit. A developer may surrender control of the executive board of the association before the time specified in subsection a. of this section, if the association members, and voting-eligible tenants where applicable, agree by a majority vote to assume control.
- c. Upon assumption by the owners of control of the executive board of the association, the developer shall deliver to the association all items and documents pertinent to the association, such as, but not limited to, a copy of the master deed, declaration of covenants and restrictions, documents of creation of the association, bylaws, minute book including all minutes, any rules and regulations, association funds and an accounting therefor, all personal property, insurance policies, government permits, a membership roster and all contracts and agreements relative to the association within 60 days of that transition date, established pursuant to this section.
- d. The association when controlled by the owners, and voting-eligible tenants where applicable, shall not take any action that would be detrimental to the sale of units by the developer, and shall continue the same level of maintenance, operation and services as immediately prior to their assumption of control, until the last unit is sold.
- e. From the time of conveyance of 75 percent of the lots, parcels, units, or interests, until the last lot, parcel, unit, or interest in the development is conveyed in the ordinary course of business, the master deed,

bylaws or declaration of covenants and restrictions shall not require that more than 75 percent of the votes entitled to be cast thereon be cast in the affirmative for a change in the bylaws or regulations of the association.

f. The developer shall not be permitted to cast any votes allocated to unsold lots, parcels, units, or interests, in order to amend the master deed, bylaws, or any other document, for the purpose of changing the permitted use of a lot, parcel, unit, or interest, or for the purpose of reducing the common elements or facilities.

## History

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L. [1993, c. 30](#), § 5; amended [2017, c. 106](#), § 8, eff. July 13, 2017.

Annotations

## LexisNexis® Notes

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### Notes

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#### Effective Dates

Section 9 of L. [2017, c. 106](#) provides: "This act shall take effect immediately, except that paragraphs (1) through (9) of subsection c. of section 6 concerning notice, nominations, ballot content, voting, and vote distribution in executive board elections shall remain inoperative until the first day of the third month next following enactment and shall be applicable to each executive board election on or after that date." Chapter 106, L. 2017, was approved on July 13, 2017.

#### Amendment Notes

2017 amendment, by Chapter 106, added "and voting-eligible tenants where applicable" at the end of a.(1) and a.(2); inserted "and voting-eligible tenants where applicable" in a.(3) and d.; inserted "executive" near the end of the second sentence of b.; rewrote the third sentence of b., which formerly read: "Unless the bylaws provide otherwise, each unit conveyed to an owner shall be entitled to one vote"; substituted "association members, and voting-eligible tenants where applicable," for "owners" in the last sentence of b.; and in c., deleted "forthwith" preceding "deliver", and added "within 60 days of that transition date, established pursuant to this section" at the end.

## Case Notes

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### Governments: Local Governments: Duties & Powers

### Real Property Law: Common Interest Communities: Homeowners Associations

### Governments: Local Governments: Duties & Powers

Nothing in either the Municipal Land Use Law, N.J. Stat. Ann. §§ [40:55D-1](#) to -99, or the Municipal Services Act, N.J. Stat. Ann. § [40:67-23.2](#) et seq., prohibits a limited bargained-for delegation of a municipality's obligations to a developer. Under a properly adopted development agreement as provided in the Municipal Land Use Law, a municipality may delegate its statutory obligations under N.J. Stat. Ann. § [40:67-23.3](#) until such time as the

developer's control of the executive board of a homeowners association established pursuant to the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. §§ [45:22A-21](#) to -56, terminates. [Ramapo River Reserve Homeowners Ass'n v. Borough of Oakland, 186 N.J. 439, 896 A.2d 459, 2006 N.J. LEXIS 172 \(N.J. 2006\)](#).

### Real Property Law: Common Interest Communities: Homeowners Associations

Nothing in either the Municipal Land Use Law, N.J. Stat. Ann. §§ [40:55D-1](#) to -99, or the Municipal Services Act, N.J. Stat. Ann. § [40:67-23.2](#) et seq., prohibits a limited bargained-for delegation of a municipality's obligations to a developer. Under a properly adopted development agreement as provided in the Municipal Land Use Law, a municipality may delegate its statutory obligations under N.J. Stat. Ann. § [40:67-23.3](#) until such time as the developer's control of the executive board of a homeowners association established pursuant to the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. §§ [45:22A-21](#) to -56, terminates. [Ramapo River Reserve Homeowners Ass'n v. Borough of Oakland, 186 N.J. 439, 896 A.2d 459, 2006 N.J. LEXIS 172 \(N.J. 2006\)](#).

Court affirmed summary judgment against residents of a planned development community on their claim that weighted voting system of homeowners' association, based on value of each owner's property, was unconstitutional. [Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 \(App.Div.\)](#), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\)](#).

### Research References & Practice Aids

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#### Cross References:

Solar collectors on certain roofs, homeowners association authority limited, see [45:22A-48.2](#).

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## N.J. Stat. § 45:22A-48

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-48. Preparation, distribution of explanatory materials and guidelines**

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The Commissioner of Community Affairs shall cause to be prepared and distributed, for the use and guidance of associations, executive boards and administrators, explanatory materials and guidelines to assist them in achieving proper and timely compliance with the requirements of [P.L. 1993, c. 30 \(C. 45:22A-43 et al.\)](#). Such guidelines may include the text of model bylaw provisions suggested or recommended for adoption. Failure or refusal of an association or executive board to make proper amendment or supplementation of its bylaws prior to the effective date of [P.L. 1993, c. 30 \(C. 45:22A-43 et al.\)](#) shall not, however, affect their obligation of compliance therewith on and after that effective date.

### **History**

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L. [1993, c. 30](#), § 6.

Annotations

### **LexisNexis® Notes**

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### **Case Notes**

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#### **Real Property Law: Common Interest Communities: Homeowners Associations**

Amendments to the Planned Real Estate Development Full Disclosure Act, which were enacted in 1993 and address administration and management of planned real estate developments, apply to a community association founded before the enactment of the statute and its amendments. [Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22, 890 A.2d 947, 2006 N.J. Super. LEXIS 29 \(App.Div. 2006\)](#), certif. denied, 188 N.J. 357, 907 A.2d 1016, 2006 N.J. LEXIS 1655 (N.J. 2006), certif. denied, 186 N.J. 608, 897 A.2d 1061, 2006 N.J. LEXIS 544 (N.J. 2006), rev'd, [192 N.J. 344, 929 A.2d 1060, 2007 N.J. LEXIS 911 \(N.J. 2007\)](#).

### **Research References & Practice Aids**

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#### **LexisNexis® Notes**

**Administrative Code:**

N.J.A.C. 5:20 (2013), CHAPTER MEETINGS OF GOVERNING BOARDS OF ASSOCIATIONS OF CONDOMINIUMS AND OTHER PLANNED REAL ESTATE DEVELOPMENTS, 5, Chapter 20 — Chapter Notes.

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## N.J. Stat. § 45:22A-48.1

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-48.1. Homeowners' association prohibited from limiting, prohibiting display of U.S. flag, yellow ribbons, signs in support of troops**

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- a. A homeowners' association formed to manage the elements of property owned in common by all members of a community, whether it be an association managing a condominium, a private community, including retirement communities, or a cooperative housing development, shall not adopt or enforce a rule or bylaw limiting or prohibiting the display of the flag of the United States of America or yellow ribbons and signs supporting United States troops, or charge a fee for any such display, except as provided in subsection b. of this section. Any such rule or bylaw adopted by a homeowners' association in violation of this section shall be null and void.
- b. A homeowners' association may direct removal of an American flag or yellow ribbons and signs supporting United States troops when the display threatens public safety, restricts necessary maintenance activities, interferes with the property rights of another, or is conducted in a manner inconsistent with the rules and customs deemed the proper manner to display the flag, such as the federal flag Code, 4 U.S.C. § 1 et seq., or any other applicable law or guideline.

### **History**

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L. [2003, c. 209](#), § 2, eff. Jan. 8, 2004.

Annotations

### **LexisNexis® Notes**

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### **Research References & Practice Aids**

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#### **LAW REVIEWS & JOURNALS:**

14 Comm. L. & Pol'y 341, ARTICLE: PUSHING PATRIOTISM: WHY FLAG ENCOURAGEMENT DOESN'T FLY.

## **N.J. Stat. § 45:22A-48.2**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-48.2. Solar collectors on certain roofs, homeowners association authority limited**

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- a. An association formed for the management of commonly-owned elements and facilities, regardless of whether organized pursuant to section 1 of [P.L.1993, c.30 \(C.45:22A-43\)](#), shall not adopt or enforce a restriction, covenant, bylaw, rule or regulation prohibiting the installation of solar collectors on certain roofs of dwelling units, as follows:

A roof of a single-family dwelling unit which is solely owned by an individual or individuals, and which is not designated as a common element or common property in the governing documents of an association; and

A roof of a townhouse dwelling unit, which for the purposes of this subsection means any single-family dwelling unit constructed with attached walls to another such unit on at least one side, which unit extends from the foundation to the roof, and has at least two sides which are unattached to any other building, and the repair of the roof for the townhouse dwelling unit is designated as the responsibility of the owner and not the association in the governing documents.

- b. An association may adopt rules to regulate the installation and maintenance of solar collectors on those roofs as specified in subsection a. of this section, in accordance with subsection c. of this section, and as follows:

- (1) The qualifications, certification and insurance requirements of personnel or contractors who may install the solar collectors;
- (2) The location where solar collectors may be placed on roofs;
- (3) The concealment of solar collectors' supportive structures, fixtures and piping;
- (4) The color harmonization of solar collectors with the colors of structures or landscaping in the development; and
- (5) The aggregate size or coverage or total number of solar collectors, provided that the provisions of paragraph (2) of subsection c. below are met.

- c.

- (1) An association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with a rule or rules would increase the solar collectors' installation or maintenance costs by an amount which is estimated to be greater than 10 percent of the total cost of the initial installation of the solar collectors, including the costs of labor and equipment.
- (2) An association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with such rules inhibits the solar collectors from functioning at their intended maximum efficiency.

- d. The Commissioner of Community Affairs shall enforce the provisions of [P.L.2007, c.153 \(C.45:22A-48.2\)](#) in accordance with the authority granted under section 18 of P.L.1977, c. 419 ([C.45:22A-38](#)).

e. The provisions of [P.L.2007, c.153 \(C.45:22A-48.2\)](#) shall not apply to associations that are under the control of the developer as provided under section 5 of [P.L.1993, c.30 \(C.45:22A-47\)](#).

## History

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L. [2007, c. 153](#), § 1, eff. Aug. 21, 2007.

Annotations

## LexisNexis® Notes

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## Research References & Practice Aids

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### LAW REVIEWS & JOURNALS:

[62 Rutgers L. Rev. 527](#), NOTE: Are Traditional Property Rights Receding with Renewable Energy on the Horizon.

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## **N.J. Stat. § 45:22A-48.3**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-48.3. Posting on Internet of information relative to disability accommodation rights for residents of certain communities.**

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The Division on Civil Rights in the Department of Law and Public Safety, in consultation with the Department of Community Affairs, shall post information on its Internet website explaining disability accommodation rights under the "Law Against Discrimination," P.L.1945, c.169 ([C.10:5-1](#) et seq.) for owners and occupants of condominiums, cooperatives, and other common interest communities governed by a homeowners' association or similar entity. The Internet posting shall include, but not be limited to, the owners' and occupants' rights to reasonable modifications of individual units and common areas, and shall explain the obligations of governing associations and boards in evaluating and approving requests for modifications of the premises. The Internet posting shall also provide clear information on how to file a complaint alleging violations of the "Law Against Discrimination" and the potential remedies available.

The Department of Community Affairs shall post the same information on its Internet website.

### **History**

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L. [2014, c. 6](#), § 1, eff. May 15, 2014.

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## N.J. Stat. § 45:22A-49

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-49. Definitions**

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As used in sections 2 through 8 of this act:

“Agency” means the Division of Housing and Development in the Department of Community Affairs.

“Proprietary campground facility” means any real property designed and used for the purpose of camping and associated recreational uses under a condominium or cooperative form of ownership.

### **History**

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L. [1993, c. 258](#), § 1.

Annotations

### **LexisNexis® Notes**

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### **Research References & Practice Aids**

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#### **Cross References:**

Definitions, see [40:67-23.2](#).

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## **N.J. Stat. § 45:22A-50**

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-50. Discharge of duties of association, corporation**

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The association or corporation responsible for the administration of a proprietary campground facility shall discharge its duties in accordance with the application for registration, public offering statement and bylaws approved by the agency and with all applicable statutes, rules and ordinances.

#### **History**

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L. [1993, c. 258](#), § 2.

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## N.J. Stat. § 45:22A-51

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

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### **§ 45:22A-51. Compliance with lawful requirements; violations, penalties**

All unit owners and proprietary lessees in a proprietary campground facility shall comply with all lawful requirements set forth in the master deed or certificate of incorporation, bylaws and public offering statement of the condominium or cooperative and with all State, county and municipal laws, rules and ordinances applicable to the maintenance and operation of the proprietary campground facility. Every master deed or certificate of incorporation for a proprietary campground facility shall prohibit the use of the property for purposes of domicile or permanent residency, unless otherwise permitted by municipal ordinance. Any unit owner or proprietary lessee who, after receipt of notice to cease and desist from the association or corporation responsible for the administration of the facility, shall continue to violate, or allow any other person to violate, any lawful requirement set forth in the master deed or certificate of incorporation, bylaws or public offering statement, or any applicable law, rule or ordinance, in contravention of this section, shall be subject to eviction and termination of contractual rights in a summary proceeding in the Special Civil Part of the Law Division of the Superior Court.

### **History**

L. [1993, c. 258](#), § 3.

Annotations

### **LexisNexis® Notes**

### **Research References & Practice Aids**

#### **Administrative Code:**

[N.J.A.C. 5:10A-2.1](#) (2013), CHAPTER PROPRIETARY CAMPGROUND FACILITY HEALTH AND SAFETY STANDARDS, Duties of association.

## N.J. Stat. § 45:22A-52

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

**LexisNexis® New Jersey Annotated Statutes > Title 45. Professions and Occupations > Subtitle 2. Other Regulated Occupations > Chapter 22A. Real Estate Developers**

### **§ 45:22A-52. Adoption of minimum health and safety standards; inspection program**

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The agency shall adopt, after consultation with the State Commissioner of Health and the Public Health Council and in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 ([C. 52:14B-1](#) et seq.), minimum health and safety standards for proprietary campground facilities. The agency shall inspect each proprietary campground facility annually in order to ensure compliance with these minimum health and safety standards and shall establish and charge fees sufficient to cover the costs of the inspection program.

### **History**

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L. [1993, c. 258](#), § 4.

Annotations

### **LexisNexis® Notes**

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### **Research References & Practice Aids**

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**Administrative Code:**

[N.J.A.C. 5:10A](#) (2013), CHAPTER PROPRIETARY CAMPGROUND FACILITY HEALTH AND SAFETY STANDARDS, 5, Chapter 10A — Chapter Notes.

## N.J. Stat. § 45:22A-53

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

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### **§ 45:22A-53. Noncompliance; penalties**

Any person, including any individual, corporation or association, who shall fail to comply with the requirements of this act shall be subject to the issuance by the agency of a cease and desist order under section 13 of P.L.1977, c. 419 ([C. 45:22A-33](#)), to injunctive relief and appointment of a receiver under section 15 of P.L.1977, c. 419 ([C. 45:22A-35](#)) and to civil penalties under section 18 of P.L.1977, c. 419 ([C. 45:22A-38](#)); provided, however, that the minimum penalty that may be assessed under this act shall be \$50 per violation.

### **History**

L. [1993, c. 258](#), § 5.

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## N.J. Stat. § 45:22A-54

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

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### **§ 45:22A-54. Application for hearing**

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Any person aggrieved by any order issued by the agency under this act shall be entitled to a hearing before the Commissioner of Community Affairs pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 ([C. 52:14B-1](#) et seq.). The application for such hearing must be filed with the agency within 10 business days of the receipt by the applicant of notice of the order complained of.

### **History**

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L. [1993, c. 258](#), § 6.

Annotations

### **LexisNexis® Notes**

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### **Research References & Practice Aids**

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#### **Administrative Code:**

[N.J.A.C. 5:10A-1.1](#) (2013), CHAPTER PROPRIETARY CAMPGROUND FACILITY HEALTH AND SAFETY STANDARDS, Administration and enforcement.

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## N.J. Stat. § 45:22A-55

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

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### **§ 45:22A-55. Enforcement of standards**

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The agency may delegate authority to enforce the minimum health and safety standards established under section 4 of this act to municipal and county governments. Such enforcement shall be subject to the supervision and control of the agency and in accordance with such rules as it may establish. Nothing in this act shall be construed to preclude the right of any municipality, health agency or the Pinelands Commission in the Pinelands area to adopt and enforce ordinances or regulations more restrictive than this act or any rules promulgated hereunder.

### **History**

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L. [1993, c. 258](#), § 7.

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## N.J. Stat. § 45:22A-56

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 254, and also including c. 256, 258-278, 280-285, 287-296, and 298-300, and J.R. 19

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### **§ 45:22A-56. Agreements with school district**

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Nothing in this act shall be construed as precluding any unit owner, proprietary lessee or other occupant in a proprietary campground facility, who does not have a residence in the school district in which the proprietary campground facility is located, from entering into a voluntary agreement with the school district, or with any other school district, on a tuition-paying basis and subject to acceptance of such terms and conditions as may be mutually agreed upon.

### **History**

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L. [1993, c. 258](#), § 8.

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