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# New Jersey Expands the Rights of Common Interest Community Residents

Legislation expanding and clarifying the voting rights of residents of common interest communities (i.e., condominiums, cooperatives, and housing developments which include shared common facilities or areas in addition to individually owned units) was signed into law by Governor Christie on July 13. Inspired by the outcome of a lawsuit brought by residents of a common interest community known as Radburn, the legislation specifically mandates that all unit owners (where a "unit" is any lot, parcel, unit or interest in a planned real estate development) are members of the association and provides members in good standing, along with certain tenant residents, with basic rights to participate in the election of association board members. Specifically, resident owners in good standing have the right to nominate any unit member in good standing as a candidate for an executive board position, and to run for an executive board position.

Enacted in 1977, the Planned Real Estate Development Full Disclosure Act (PREDFDA), N.J.S.A. 45:22A-21, et seq., regulates real estate developments offered as part of a common promotional plan in which owners share common facilities or interests in real property in addition to owning discrete individual interests. Amendments made to the PREDFDA in 1993 (the Amendments) require that an association be formed to manage the common elements. The Amendments provide for the election of an executive board "by and responsible to the members of the association."

In *Moore v. The Radburn Association, Inc.*, 2010 N.J. Super. Unpub. LEXIS 561 (App. Div. March 18, 2010), *certif. denied*, 202 N.J. 346 (June 15, 2010), the Court held that since the Amendments did not specifically state that all unit owners are members of the association, there was no such requirement. Rather, it was acceptable that only some unit owners were members of the association, as was the case in *Radburn*. Further, the Court held that PREDFDA did not require all homeowners be permitted to nominate candidates to the executive board.

In response, the newly enacted legislation specifically defines an "Association member" to include a unit owner or the unit's tenant, to the extent the development's governing documents allow a tenant to be a member. Members must receive notice of elections, and of their ability to nominate and vote for any association member in good standing, as well as notice that they are permitted to be a candidate for election to the board. Under certain conditions, electronic notice and voting is acceptable. The legislation provides that proxies may be used, as long as absentee ballots are also available.

The legislation also establishes that the number of votes per unit need not be limited to a single vote. The bylaws may also allow units with different types of uses to nominate and vote for some members of the board and have other members of the board nominated and elected by association members and voting-eligible tenants of units of a different use type. It is also permissible to limit the number of executive board members nominated and elected by certain association members if the limit is based on a classification intended to further the election of executive board members of affordable housing units that represent a minority of the units in a planned real estate development. No more than one owner or voting-eligible tenant from a single unit may serve on the board simultaneously, except for representatives of the developer during the period of developer control.

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