

Community Trends®



LEGISLATIVE UPDATE

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In early June of this year the New Jersey Department of Community Affairs (DCA) issued a set of new administrative regulations meant to interpret and apply the various elements of the Radburn election law, some of which are seriously flawed and will negatively impact New Jersey's community associations. As you know, in 2017 the New Jersey legislature passed the "Radburn" law, which included various amendments to the Planned Real Estate Development Full Disclosure Act (PREDFDA) and Condo Acts as they relate to voting and elections in common interest communities, along with other association operational procedures. By law, the DCA must accept comments from stakeholders regarding these proposed regulations for a limited period of time expiring on August 2, 2019. You may access the full text of these proposed regulations at this web address:

https://www.nj.gov/dca/divisions/codes/codreg/pdf_rule_proposals/PRED_Election_Regs.pdf

Your LAC has carefully reviewed and analyzed those proposed regulations and found that while some are helpful and acceptable, many are problematic and some downright unacceptable. The New Jersey Legislative Action Committee (NJLAC) has submitted a letter to the DCA outlining our concerns with each of those many problematic and objectionable proposed regulations. You may access the full text of this 23-page letter at this web address:

www.cainj.org

For purposes of this column I have listed below some of those proposed regulations we see as the most problematic:

➤ **Fines** – Section 5:26-8.14 provides that DCA may

fine any person who violates the regulations, including board members and managers! Fines can range from \$50 to \$50,000!

➤ **Public Ballot Tallying** – Section 5:26-8.9(h)(2) states that all ballots shall be publicly tallied and open to inspection by any member for a period of 90 days.

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➤ **All Votes Must be Anonymous Including Absentee and Proxy Ballots** – Section 5:26-8.9(h)(3) mandates that all forms of votes be anonymous, which can create serious, practical election issues.

➤ **Removal of Board Members by Petition** – Section 5:26-8.11(d) allows automatic removal of one or more board members upon presentation of a petition signed by 51% of the members.

➤ **No Binding Board Votes in Executive Session** – Section 5:26-8.12(e)(2) mandates that matters that could have previously been voted on in executive ses-

sion (e.g. pending litigation, matters of personal privacy, personnel matters, etc.) must now be voted on in a meeting open to the members.

➤ **7-Day Notice of Board Meeting with Agenda of All Items for Discussion and Action –**

Section 5:26-8.12(c)(3) requires posting of a notice of board meetings seven days in advance (current regulations provide for 48-hour advance posting) and fails to include current law that agendas must be posted only “to the extent known.”

➤ **Associations with Affordable Housing Units Must Reserve a Board Seat for Affordable Owners –**

Section 5:26-8.10(a)(2) provides that when the bylaws do not set aside a board seat for affordable owners, the Association must amend its bylaws to provide for this.

We expect the DCA will take time to review and consider the many comments it receives on this issue during the comment period and will eventually publish the final Radburn regulations. We will keep you posted. If you wish to send your own comments to the DCA, you may send them to this email address at the DCA: geraldine.callahan@dca.nj.gov.

On another important topic, it has come to our attention that a bill the LAC helped initiate and support is being misinterpreted by some, and their comments are making their way into

local newspapers. I refer to S2425, a bill entitled “The New Jersey Common Interest Ownership Act”, which is intended to begin the process of consolidating into one omnibus statute the various statutes existing within our state that address the various forms of common interest ownership existing here. This bill has already been overwhelmingly approved by the New Jersey Senate. The misinterpretation appears to center on the reference of taxation on common property within the bill. One writer of a letter to the editor of a local paper in Ocean County has mistakenly alleged that this bill advances “New Jersey’s war on its seniors” by permitting the state to tax an association’s common property. In fact, a review of the bill reveals just the opposite to be true. Section 46: 8E-4 of this bill provides that “each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against common elements...”.

The author’s motivation in sending that misleading letter to the editor is anyone’s guess, but the result was to stoke fear among those owning homes in common interest communities, particularly seniors, a fear that is unfounded. If you have questions whether any pending legislation helps or hurts you and your neighbors, we invite you to first contact us here at CAI-NJ and the LAC...remember, YOU are our number one priority!

See you here in the next issue of *Community Trends*®...it’ll be the annual LAC issue chock full of important information! ■