

Department of Community Affairs Issues Substantial Regulations Affecting Common Interest Communities

On May 18, 2020, the New Jersey Department of Community Affairs, Division of Codes and Standards (DCA) published new regulations under the Planned Real Estate Development Full Disclosure Act (PREFDA). The purpose of these regulations, which became effective upon publication, is to assist in the administration of the Radburn Law (P.L. 2017, Ch. 106), which most notably amended the election provisions in PREFDA.

The new regulations have been a hot topic in the common interest community industry since they were proposed on June 3, 2019. This level of interest prompted a strong response, both for and against the proposed changes, during the public comment period that expired on August 2, 2019. In fact, 158 comments and responses were included with the publication of the regulations.

On January 6, 2020, DCA adopted the regulations, which were filed on April 9, 2020 without any substantial changes from the original proposal. These regulations amend N.J.A.C. 5:26-1.3, 8.1, 8.2, and 8.4; adopt new regulations at N.J.A.C. 5:26-8.8 through 8.14; and repeal N.J.A.C. 5:20 and 5:26. There are significant penalties for common interest communities found to be in violation.

Common interest communities and property managers should seek legal counsel to determine the impact of the new regulations on their properties. The following is a summary of what we perceive to be among the more significant new and revised regulations that are now in effect.

Executive Board Elections

This entirely new section provides the framework for how executive board elections are to be conducted. Specifically, it provides as follows:

Representation

Open Meetings

Notice for and conduct of board meetings will be different. The rule that has been in effect for years, N.J.A.C. 5:20-1.1, is repealed and has been replaced by N.J.A.C. 5:26-8.12. The highlights are as follows:

Association Powers and Responsibilities

The amendments to this section adopt new regulations that reinforce provisions of PREFDA that pre-date the Radburn Law.

Administration and Control

Membership in the Association

This is an entirely new section that adopts as regulations, and provides certain clarity of, several components of the Radburn Law.

Appointments, Removals, and Executive Board Vacancies

Amendments to the Bylaws

Complaints and Penalties

Given the potential imposition of steep penalties for violations of these new regulations, common interest communities should work closely with legal counsel to ensure compliance.

Please contact the authors of this Alert with questions about the new regulations or to discuss your specific circumstances. As members of our Community Association Practice Group, they are available to assist our clients in this and many other regards.

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