

46:8B-1. Short title

This act shall be known and may be cited as the "Condominium Act."

L.1969, c. 257, s. 1, eff. Jan. 7, 1970.

46:8B-2. Saving clause

This act shall not be construed to amend or repeal the act entitled "An act concerning interests in real property and providing for the creation and regulation of horizontal property regimes," approved December 16, 1963 (P.L.1963, c. 168). Said act shall continue to govern all property constituted into a horizontal property regime thereunder, provided that upon waiver of any such regime as provided in said act, the real property may be subjected to the provisions of this act as provided herein.

L.1969, c. 257, s. 2, eff. Jan. 7, 1970.

46:8B-3. Definitions

The following words and phrases as used in this act shall have the meanings set forth in this section unless the context clearly indicates otherwise:

a. "Assigns" means any person to whom rights of a unit owner have been validly transferred by lease, mortgage or otherwise.

b. "Association" means the entity responsible for the administration of a condominium, which entity may be incorporated or unincorporated.

c. "Bylaws" means the governing regulations adopted under this act for the administration and management of the property.

d. "Common elements" means:

(i) the land described in the master deed;

(ii) as to any improvement, the foundations, structural and bearing parts, supports, main walls, roofs, basements, halls, corridors, lobbies, stairways, elevators, entrances, exits and other means of access, excluding any specifically reserved or limited to a particular unit or group of units;

(iii) yards, gardens, walkways, parking areas and driveways, excluding any specifically reserved or limited to a particular unit or group of units;

(iv) portions of the land or any improvement or appurtenance reserved exclusively for the management, operation or maintenance of the common elements or of the condominium property;

(v) installations of all central services and utilities;

(vi) all apparatus and installations existing or intended for common use;

(vii) all other elements of any improvement necessary or convenient to the existence, management, operation, maintenance and safety of the condominium property or normally in common use; and

(viii) such other elements and facilities as are designated in the master deed as common elements.

e. "Common expenses" means expenses for which the unit owners are proportionately liable, including but not limited to:

- (i) all expenses of administration, maintenance, repair and replacement of the common elements;
- (ii) expenses agreed upon as common by all unit owners; and
- (iii) expenses declared common by provisions of this act or by the master deed or by the bylaws.

f. "Common receipts" means:

- (i) rent and other charges derived from leasing or licensing the use of common elements;
- (ii) funds collected from unit owners as common expenses or otherwise; and
- (iii) receipts designated as common by the provisions of this act or by the master deed or the bylaws.

g. "Common surplus" means the excess of all common receipts over all common expenses.

h. "Condominium" means the form of ownership of real property under a master deed providing for ownership by one or more owners of units of improvements together with an undivided interest in common elements appurtenant to each such unit.

i. "Condominium property" means the land covered by the master deed, whether or not contiguous and all improvements thereon, all owned either in fee simple or under lease, and all easements, rights and appurtenances belonging thereto or intended for the benefit thereof.

j. "Developer" means the person or persons who create a condominium or lease, sell or offer to lease or sell a condominium or units of a condominium in the ordinary course of business, but does not include an owner or lessee of a unit who has acquired his unit for his own occupancy.

k. "Limited common elements" means those common elements which are for the use of one or more specified units to the exclusion of other units.

l. "Majority" or "majority of the unit owners" means the owners of more than 50% of the aggregate in interest of the undivided ownership of the common elements as specified in the master deed. If a different percentage of unit owners is required to be determined under this act or under the master deed or bylaws for any purpose, such different percentage of owners shall mean the owners of an equal percentage of the aggregate in interest of the undivided ownership of the common elements as so specified.

m. "Master deed" means the master deed recorded under the terms of section 8 of this act, as such master deed may be amended or supplemented from time to time, being the instrument by which the owner in fee simple or lessee of the property submits it to the provisions of this chapter.

n. "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

o. "Unit" means a part of the condominium property designed or intended for any type of independent use, having a direct exit to a public street or way or to a common element or common elements leading to a public street or way or to an easement or right of way leading to a public street or way, and includes the proportionate undivided interest in the common elements and in any limited common elements assigned thereto in the master deed or any amendment thereof.

p. "Unit deed" means a deed of conveyance of a unit in recordable form.

q. "Unit owner" means the person or persons owning a unit in fee simple.

L.1969, c. 257, s. 3, eff. Jan. 7, 1970. Amended by L.1973, c. 216, s. 1, eff. Aug. 23, 1973; L.1979, c. 157, s. 1, eff. July 19, 1979.

46:8B-4. Status of units

Each unit shall constitute a separate parcel of real property which may be dealt with by the owner thereof in the same manner as is otherwise permitted by law for any other parcel of real property.

L.1969, c. 257, s. 4, eff. Jan. 7, 1970.

46:8B-5. Types of ownership

Any unit may be held and owned by one or more persons in any form of ownership, real estate tenancy or relationship recognized under the laws of this State.

L.1969, c. 257, s. 5, eff. Jan. 7, 1970.

46:8B-6. Common elements

The proportionate undivided interest in the common elements assigned to each unit shall be inseparable from such unit, and any conveyance, lease, devise or other disposition or mortgage or other encumbrance of any unit shall extend to and include such proportionate undivided interest in the common elements, whether or not expressly referred to in the instrument effecting the same. The common elements shall remain undivided and shall not be the object of an action for partition or division. The right of any unit owner to the use of the common elements shall be a right in common with all other unit owners (except to the extent that the master deed provides for limited common elements) to use such common elements in accordance with the reasonable purposes for which they are intended without encroaching upon the lawful rights of the other unit owners.

L.1969, c. 257, s. 6, eff. Jan. 7, 1970.

46:8B-7. Invalidity of contrary agreements

Any agreement contrary to the provisions of this act shall be void.

L.1969, c. 257, s. 7, eff. Jan. 7, 1970.

46:8B-8 Creation, establishment of condominium.

8. A condominium may be created and established by recording in the office of the county recording officer of the county wherein the land is located a master deed executed and acknowledged by all owners or the lessees setting forth the matters required by section 9 of P.L.1969, c.257 (C.46:8B-9) and section 3 of P.L.1960, c.141 (C.46:23-9.11). The provisions of the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.) shall apply solely to real property of interests therein which have been subjected to the terms of P.L.1969, c.257 as provided in this section.

L.1969,c.257,s.8; amended 1973, c.216, s.2; 1997, c.211, s.3.

46:8B-8.1. Establishment of condominium upon land held under lease

Nothing in the act to which this act is a supplement shall be construed to prevent the creation and establishment of a condominium as defined in this act, upon land held under a lease by the lessee or creator of the condominium, provided that the master deed required under this act shall be signed, not only by the lessee, but also by the lessor of the land who holds the legal title to the land in fee simple.

L.1973, c. 216, s. 3, eff. Aug. 23, 1973.

46:8B-9 Master deed, contents.

9. The master deed shall set forth, or contain exhibits setting forth the following matters:

(a) A statement submitting the land described in the master deed to the provisions of the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.).

(b) A name, including the word "condominium" or followed by the words "a condominium," by which the property shall thereafter be identified.

(c) A legal description of the land.

(d) A survey of the condominium property in sufficient detail to show and identify common elements, each unit and their respective locations and approximate dimensions. The plans shall bear a certification by a land surveyor, professional engineer or architect authorized and qualified to practice in this State setting forth that the plans constitute a correct representation of the improvements described. The survey and plans shall constitute a condominium plan as defined in section 2 of P.L.1960, c.141 (C.46:23-9.10).

(e) An identification of each unit by distinctive letter, name or number so that each unit may be separately described thereafter by such identification.

(f) A description of the common elements and limited common elements, if any.

(g) The proportionate undivided interests in the common elements and limited common elements, if any, appurtenant to each unit. These interests shall in each case be stated as percentages aggregating 100%.

(h) The voting rights of unit owners.

(i) By-laws.

(j) A method of amending and supplementing the master deed, which shall require the recording of any amendment or supplement in the same office as the master deed before it shall become effective.

(k) The name and nature of the association and if the association is not incorporated, the name and residence address, within this State of the person designated as agent to receive service of process upon the association.

(l) The proportions or percentages and manner of sharing common expenses and owning common surplus.

(m) Any other provisions, not inconsistent with the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), as may be desired, including but not limited to restrictions or limitations upon the use, occupancy,

transfer, leasing or other disposition of any unit (provided that any restriction or limitation shall be otherwise permitted by law) and limitations upon the use of common elements.

L.1969,c.257,s.9; amended 1997, c.211, s.4.

46:8B-10. Unit deeds and other instruments

A deed, mortgage, lease or other instrument pertaining to a unit shall have the same force and effect in regard to such unit as would be given to a like instrument pertaining to other real property which has been similarly made, executed, acknowledged and recorded. A unit deed shall contain the following:

(a) The name of the condominium as set forth in the master deed, the name of the political subdivision and county in which the condominium property is located and a reference to the recording office, the book and page where the master deed and any amendment thereto are recorded.

(b) The unit designation as set forth in the master deed.

(c) A reference to the last prior unit deed conveying such unit, if previously conveyed.

(d) A statement of the proportionate undivided interest in the common elements appurtenant to such unit as set forth in the master deed or any amendments thereof.

(e) Any other matters, consistent with this act, which the parties may deem appropriate.

L.1969, c. 257, s. 10, eff. Jan. 10, 1970.

46:8B-11. Amendments to master deed

The master deed may be amended or supplemented in the manner set forth therein. Unless otherwise provided therein, no amendment shall change a unit unless the owner of record thereof and the holders of record of any liens thereon shall join in the execution of the amendment or execute a consent thereto with the formalities of a deed. Notwithstanding any other provision of this act or the master deed, the designation of the agent for service of process named in the master deed may be changed by an instrument executed by the association and recorded in the same office as the master deed.

L.1969, c. 257, s. 11, eff. Jan. 7, 1970.

46:8B-12. The association

The association provided for by the master deed shall be responsible for the administration and management of the condominium and condominium property, including but not limited to the conduct of all activities of common interest to the unit owners. The association may be any entity recognized by the laws of New Jersey, including but not limited to a business corporation or a nonprofit corporation.

L.1969, c. 257, s. 12, eff. Jan. 7, 1970.

46:8B-12.1. Members of governing board; elections; written approval of actions by developer; control by board; delivery of items

a. When unit owners other than the developer own 25% or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect not less than 25% of the members of the governing board or other form of administration of the association.

Unit owners other than the developer shall be entitled to elect not less than 40% of the members of the governing board or other form of administration upon the conveyance of 50% of the units in a condominium. Unit owners other than the developer shall be entitled to elect all of the members of the governing board or other form of administration upon the conveyance of 75% of the units in a condominium. However, when some of the units of a condominium have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business, the unit owners other than the developer shall be entitled to elect all of the members of the governing board or other form of administration.

Notwithstanding any of the provisions of subsection a of this section, the developer shall be entitled to elect at least one member of the governing board or other form of administration of an association as long as the developer holds for sale in the ordinary course of business one or more units in a condominium operated by the association.

b. Within 30 days after the unit owners other than the developer are entitled to elect a member or members of the governing board or other form of administration of an association, the association shall call, and give not less than 20 days' nor more than 30 days' notice of, a meeting of the unit owners to elect the members of the governing board or other form of administration. The meeting may be called and the notice given by any unit owner if the association fails to do so.

c. If a developer holds one or more units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

(1) Assessment of the developer as a unit owner for capital improvements.

(2) Any action by the association that would be detrimental to the sales of units by the developer. However, an increase in assessments for common expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

d. Prior to, or not more than 60 days after, the time that unit owners other than the developer elect a majority of the members of the governing board or other form of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, the developer shall deliver to the association all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(1) A photocopy of the master deed and all amendments thereto, certified by affidavit of the developer, or an officer or agent of the developer, as being a complete copy of the actual master deed.

(2) A certified copy of the association's articles of incorporation, or if not incorporated, then copies of the documents creating the association.

(3) A copy of the bylaws.

(4) The minute books, including all minutes, and other books and records of the association, if any.

(5) Any house rules and regulations which have been promulgated.

(6) Resignations of officers and members of the governing board or other form of administration who are required to resign because the developer is required to relinquish control of the association.

(7) An accounting for all association funds, including capital accounts and contributions.

(8) Association funds or control thereof.

(9) All tangible personal property that is property of the association, represented by the developer to be part of the common elements or ostensibly part of the common elements, and an inventory of that property.

(10) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the developer, his agent, or an architect or engineer authorized to practice in this State that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements. If the condominium property has been declared a condominium more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph shall not apply.

(11) Insurance policies.

(12) Copies of any certificates of occupancy which may have been issued for the condominium property.

(13) Any other permits issued by governmental bodies applicable to the condominium property in force or issued within 1 year prior to the date the unit owners other than the developer take control of the association.

(14) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(15) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(16) Leases of the common elements and other leases to which the association is a party.

(17) Employment contracts, management contracts, maintenance contracts, contracts for the supply of equipment or materials, and service contracts in which the association is one of the contracting parties and maintenance contracts and service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly to pay some or all of the fee or charge of the person or persons performing the service.

(18) All other contracts to which the association is a party.

L.1979, c. 157, s. 2, eff. July 19, 1979.

46:8B-12.2. Management, employment, service or maintenance contract or contract for equipment or materials; 2 year limitation; termination

Any management, employment, service or maintenance contract or contract for the supply of equipment or material which is directly or indirectly made by or on behalf of the association, prior to the unit owners having elected at least 75% of the members of the governing board or other form of administration of the association, shall not be entered into for a period in excess of two years. Any such contract or lease may not be renewed or extended for periods in excess of two years and at the end of any two-year period, the association may terminate any further renewals or extensions thereof.

Notwithstanding the above, any management contract or agreement entered into after the effective date of this amendatory act shall terminate 90 days after the first meeting of a governing board or other form of administration in which the unit owners constitute a majority of the members, unless the board or other form of administration ratifies the contract or agreement.

L.1979, c. 157, s. 3, eff. July 19, 1979. Amended by L.1983, c. 54, s. 1, eff. Feb. 4, 1983.

46:8B-13. Bylaws

13. The administration and management of the condominium and condominium property and the actions of the association shall be governed by bylaws which shall initially be recorded with the master deed and shall provide, in addition to any other lawful provisions, for the following:

(a) The form of administration, indicating the titles of the officers and governing board of the association, if any, and specifying the powers, duties and manner of selection, removal and compensation, if any, of officers and board members. If the bylaws provide that any of the powers and duties of the association as set forth in sections 14 and 15 of P.L.1969, c.257 (C.46:8B-14 and 46:8B-15) be exercised through a governing board elected by the membership of the association, or through officers of the association responsible to and under the direction of such a governing board, all meetings of that governing board, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance by all unit owners, and adequate notice of any such meeting shall be given to all unit owners in such manner as the bylaws shall prescribe; except that the governing 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 unit owners, minutes of the proceedings shall be taken, and copies of those minutes shall be made available to all unit owners before the next open meeting.

(b) The method of calling meetings of unit owners, the percentage of unit owners or voting rights required to make decisions and to constitute a quorum, but such bylaws may nevertheless provide that unit owners may waive notice of meetings or may act by written agreement without meetings.

(c) The manner of collecting from unit owners their respective shares of common expenses and the method of distribution to the unit owners of their respective shares of common surplus or such other application of common surplus as may be duly authorized by the bylaws.

(d) 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, including the imposition of fines and late fees which may be enforced as a lien pursuant to section 21 of P.L.1969, c.257 (C.46:8B-21) relating to the operation, use, maintenance and enjoyment of the units and of the common elements including limited common elements.

L.1969,c.257,s.13; amended 1991, c.48, s.1; 1996, c.79, s.1.

46:8B-13.1. Explanatory materials, guidelines for condominium associations, administrators

The Commissioner of Community Affairs shall cause to be prepared and distributed, for the use and guidance of condominium associations and administrators, explanatory materials and guidelines to assist them in achieving proper and timely compliance with the requirements of this act. Such guidelines may include the text of model bylaw provisions suggested or recommended for adoption. Failure or refusal of a condominium association to make proper amendment or supplementation of its bylaws prior to the effective date of section 1 of this act shall not, however, affect its obligation of compliance therewith on and after that effective date.

L.1991,c.48,s.2.

46:8B-14. Responsibilities of association

14. The association, acting through its officers or governing board, shall be responsible for the performance of the following duties, the costs of which shall be common expenses:

- (a) The maintenance, repair, replacement, cleaning and sanitation of the common elements.
- (b) The assessment and collection of funds for common expenses and the payment thereof.
- (c) The adoption, distribution, amendment and enforcement of rules governing the use and operation of the condominium and the condominium property and the use of the common elements, including but not limited to the imposition of reasonable fines, assessments and late fees upon unit owners, if authorized by the master deed or bylaws, subject to the right of a majority of unit owners to change any such rules.
- (d) The maintenance of insurance against loss by fire or other casualties normally covered under broad-form fire and extended coverage insurance policies as written in this State, covering all common elements and all structural portions of the condominium property and the application of the proceeds of any such insurance to restoration of such common elements and structural portions if such restoration shall otherwise be required under the provisions of this act or the master deed or bylaws.
- (e) The maintenance of insurance against liability for personal injury and death for accidents occurring within the common elements whether limited or general and the defense of any actions brought by reason of injury or death to person, or damage to property occurring within such common elements and not arising by reason of any act or negligence of any individual unit owner.
- (f) The master deed or bylaws may require the association to protect blanket mortgages, or unit owners and their mortgagees, as their respective interest may appear, under the policies of insurance provided under clauses (d) and (e) of this section, or against such risks with respect to any or all units, and may permit the assessment and collection from a unit owner of specific charges for insurance coverage applicable to his unit.
- (g) The maintenance of accounting records, in accordance with generally accepted accounting principles, open to inspection at reasonable times by unit owners. Such records shall include:
 - (i) A record of all receipts and expenditures.
 - (ii) An account for each unit setting forth any shares of common expenses or other charges due, the due dates thereof, the present balance due, and any interest in common surplus.
- (h) Nothing herein shall preclude any unit owner or other person having an insurable interest from obtaining insurance at his own expense and for his own benefit against any risk whether or not covered by insurance maintained by the association.
- (i) Such other duties as may be set forth in the master deed or bylaws.
- (j) An association shall exercise its powers and discharge its functions in a manner that protects and furthers or is not inconsistent with the health, safety and general welfare of the residents of the community.
- (k) An association shall provide a fair and efficient procedure for the resolution of housing-related disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation. A person other than an officer of the association, a member of the governing board or a unit owner involved in the dispute shall be made available to resolve the dispute. A unit owner may notify the Commissioner of Community Affairs if an association does not comply with this subsection. The commissioner shall have the power to order the association to provide a fair and efficient procedure for the resolution of disputes.

L.1969,c.257,s.14; amended 1995, c.313, s.1; 1996, c.79, s.2.

46:8B-15 Powers of association.

15. Subject to the provisions of the master deed, the bylaws, rules and regulations and the provisions of this act or other applicable law, the association shall have the following powers:

(a) Whether or not incorporated, the association shall be an entity which shall act through its officers and may enter into contracts, bring suit and be sued. If the association is not incorporated, it may be deemed to be an entity existing pursuant to this act and a majority of the members of the governing board or of the association, as the case may be, shall constitute a quorum for the transaction of business. Process may be served upon the association by serving any officer of the association or by serving the agent designated for service of process. Service of process upon the association shall not constitute service of process upon any individual unit owner.

(b) The association shall have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein or accessible therefrom or for making emergency repairs necessary to prevent damage to common elements or to any other unit or units. The association may charge the unit owner for the repair of any common element damaged by the unit owner or his tenant.

(c) The association may purchase units in the condominium and otherwise acquire, hold, lease, mortgage and convey the same. It may also lease or license the use of common elements in a manner not inconsistent with the rights of unit owners.

(d) The association may acquire or enter into agreements whereby it acquires leaseholds, memberships or other possessory or use interests in lands or facilities including, but not limited to country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the condominium property, intended to provide for the enjoyment, recreation or other use or benefit of the unit owners. If fully described in the master deed or bylaws, the fees, costs and expenses of acquiring, maintaining, operating, repairing and replacing any such memberships, interests and facilities shall be common expenses. If not so described in the master deed or bylaws as originally recorded, no such membership interest or facility shall be acquired except pursuant to amendment of or supplement to the master deed or bylaws duly adopted as provided therein and in this act. In the absence of such amendment or supplement, if some but not all unit owners desire any such acquisition and agree to assume among themselves all costs of acquisition, maintenance, operation, repair and replacement thereof, the association may acquire or enter into an agreement to acquire the same as limited common elements appurtenant only to the units of those unit owners who have agreed to bear the costs and expenses thereof. Such costs and expenses shall be assessed against and collected from the agreeing unit owners in the proportions in which they share as among themselves in the common expenses in the absence of some other unanimous agreement among themselves. No other unit owner shall be charged with any such cost or expense; provided, however, that nothing herein shall preclude the extension of the interests in such limited common elements to additional unit owners by subsequent agreement with all those unit owners then having an interest in such limited common elements.

(e) The association may levy and collect assessments duly made by the association for a share of common expenses or otherwise, including any other moneys duly owed the association, upon proper notice to the appropriate unit owner, together with interest thereon, late fees and reasonable attorneys' fees, if authorized by the master deed or bylaws.

(f) If authorized by the master deed or bylaws, the association may impose reasonable fines upon unit owners for failure to comply with provisions of the master deed, bylaws or rules and regulations, subject to the following provisions:

A fine for a violation or a continuing violation of the master deed, bylaws or rules and regulations shall not exceed the maximum monetary penalty permitted to be imposed for a violation or a continuing violation under section 19 of the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-19).

On roads or streets with respect to which Title 39 of the Revised Statutes is in effect under section 1 of P.L.1945, c.284 (C.39:5A-1), an association may not impose fines for moving automobile violations.

A fine shall not be imposed unless the unit owner is given written notice of the action taken and of the alleged basis for the action, and is advised of the right to participate in a dispute resolution procedure in accordance with subsection (k) of section 14 of P.L.1969, c.257 (C.46:8B-14). A unit owner who does not believe that the dispute resolution procedure has satisfactorily resolved the matter shall not be prevented from seeking a judicial remedy in a court of competent jurisdiction.

(g) Such other powers as may be set forth in the master deed or bylaws, if not prohibited by P.L.1969, c.257 (C.46:8B-1 et seq.) or any other law of this State.

L.1969,c.257,s.15; amended 1996, c.79, s.3.

46:8B-16. Authority, rights of unit owner

16. (a) No unit owner, except as an officer of the association, shall have any authority to act for or bind the association. An association, however, 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.

(b) Failure to comply with the bylaws and the rules and regulations governing the details of the use and operation of the condominium, the condominium property and the common elements, and the quality of life therein, in effect from time to time, and with the covenants, conditions and restrictions set forth in the master deed or in deeds of units, shall be grounds for reasonable fines and assessments upon unit owners maintainable by the association, or for an action for the recovery of damages, for injunctive relief, or for a combination thereof, maintainable by the association or by any other unit owner or by any person who holds a blanket mortgage or a mortgage lien upon a unit and is aggrieved by any such noncompliance.

(c) A unit owner shall have no personal liability for any damages caused by the association or in connection with the use of the common elements. A unit owner shall be liable for injuries or damages resulting from an accident in his own unit in the same manner and to the same extent as the owner of any other real estate.

(d) A unit owner may notify the Commissioner of Community Affairs upon the failure of an association to comply with requests made under subsection (g) of section 14 of P.L.1969, c.257 (C.46:8B-14) by unit owners to inspect at reasonable times the accounting records of the association. Upon investigation, the commissioner shall have the power to order the compliance of the association with such a request.

L.1969,c.257,s.16; amended 1995, c.313, s.2; 1996, c.79, s.4.

46:8B-17. Common expenses

The common expenses shall be charged to unit owners according to the percentage of their respective undivided interests in the common elements as set forth in the master deed and amendments thereto, or in such other proportions as may be provided in the master deed or by-laws. The amount of common expenses charged to each unit shall be a lien against such unit subject to the provisions of section 21 of this

act. A unit owner shall, by acceptance of title, be conclusively presumed to have agreed to pay his proportionate share of common expenses accruing while he is the owner of a unit. However, the liability of a unit owner for common expenses shall be limited to amounts duly assessed in accordance with this act, the master deed and by-laws. No unit owner may exempt himself from liability for his share of common expenses by waiver of the enjoyment of the right to use any of the common elements or by abandonment of his unit or otherwise. The common expenses charged to any unit shall bear interest from the due date set by the association at such rate not exceeding the legal interest rate as may be established by the association or if no rate is so established at the legal rate.

L.1969, c. 257, s. 17, eff. Jan. 7, 1970.

46:8B-18. Prohibited work

There shall be no material alteration of or substantial addition to the common elements except as authorized by the master deed. No unit owner shall contract for or perform any maintenance, repair, replacement, removal, alteration or modification of the common elements or any additions thereto, except through the association and its officers. No unit owner shall take or cause to be taken any action within his unit which would jeopardize the soundness or safety of any part of the condominium property or impair any easement or right appurtenant thereto or affect the common elements without the unanimous consent of all unit owners who might be affected thereby.

L.1969, c. 257, s. 18, eff. Jan. 7, 1970.

46:8B-19. Taxes, assessments and charges; valuation of units; exemptions or deductions

All property taxes, special assessments and other charges imposed by any taxing authority shall be separately assessed against and collected on each unit as a single parcel, and not on the condominium property as a whole. Such taxes, assessments and charges shall constitute a lien only upon the unit and upon no other portion of the condominium property. All laws authorizing exemptions from taxation or deductions from tax bills shall be applicable to each individual unit to the same extent they are applicable to other separate property.

L.1969, c. 257, s. 19, eff. Jan. 7, 1970. Amended by L.1975, c. 2, s. 1, eff. Jan. 22, 1975.

46:8B-20. Liens for labor or materials

(a) Except as otherwise provided in section 23, subsequent to recording the master deed as provided in this act, and while the property remains subject to this act, no lien shall arise or be effective against the condominium property as a whole. During such period, liens or encumbrances shall arise or be created only against each unit (including the undivided interest in the common elements appurtenant to such unit) in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership; provided that no labor performed or materials furnished with the consent or at the request of a unit owner or his agent or his contractor or subcontractor, shall be the basis for the filing of a lien pursuant to article 10 of chapter 44 of Title 2A of the New Jersey Statutes against the unit or any other property of any other unit owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs thereto. Labor performed or materials furnished for the common elements, if duly authorized by the association in accordance with this act, the master deed or by-laws, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to article 10 of chapter 44 of Title 2A of the New Jersey Statutes against each of the units and shall be subject to the provisions of subparagraph (b) hereunder.

(b) In the event a lien against 2 or more units becomes effective, the owner of each separate unit may remove his unit (including the undivided interest in the common elements appurtenant to such unit) from the lien and obtain a discharge and satisfaction by payment of the proportion thereof attributable to such unit. The proportion so attributable to each unit subject to the lien shall be the proportion in which all units subject to the lien share among themselves in liability for common expenses. Subsequent to any such payment, the lien on such unit shall be discharged or otherwise satisfied of record and the unit (including the undivided interest in the common elements appurtenant thereto) shall thereafter be free and clear of such lien. Such partial payment, discharge and satisfaction shall not prevent the lienor from proceeding to enforce his rights against any other unit (including the undivided interest in the common elements appurtenant thereto) not so paid, satisfied or discharged.

L.1969, c. 257, s. 20, eff. Jan. 7, 1970.

46:8B-21 Liens in favor of association; priority.

21. a. The association shall have a lien on each unit for any unpaid assessment duly made by the association for a share of common expenses or otherwise, including any other moneys duly owed the association, upon proper notice to the appropriate unit owner, together with interest thereon and, if authorized by the master deed or bylaws, late fees, fines and reasonable attorney's fees; provided however that an association shall not record a lien in which the unpaid assessment consists solely of late fees. Such lien shall be effective from and after the time of recording in the public records of the county in which the unit is located of a claim of lien stating the description of the unit, the name of the record owner, the amount due and the date when due. Such claim of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the association. Upon full payment of all sums secured by the lien, the party making payment shall be entitled to a recordable satisfaction of lien. Except as set forth in subsection b. of this section, all such liens shall be subordinate to any lien for past due and unpaid property taxes, the lien of any mortgage to which the unit is subject and to any other lien recorded prior to the time of recording of the claim of

lien.

b. A lien recorded pursuant to subsection a. of this section shall have a limited priority over prior recorded mortgages and other liens, except for municipal liens or liens for federal taxes, to the extent provided in this subsection. This priority shall be limited as follows:

(1) To a lien which is the result of customary condominium assessments as defined herein, the amount of which shall not exceed the aggregate customary condominium assessment against the unit owner for the six-month period prior to the recording of the lien.

(2) With respect to a particular mortgage, to a lien recorded prior to: (a) the receipt by the association of a summons and complaint in an action to foreclose a mortgage on that unit; or (b) the filing with the proper county recording office of a lis pendens giving notice of an action to foreclose a mortgage on that unit.

(3) In the case of more than one association lien being filed, either because an association files more than one lien or multiple associations have filed liens, the total amount of the liens granted priority shall not be greater than the assessment for the six-month period specified in paragraph (1) of this subsection. Priority among multiple filings shall be determined by their date of recording with the earlier recorded liens having first use of the priority given herein.

(4) The priority granted to a lien pursuant to this subsection shall expire on the first day of the 60th month following the date of recording of an association's lien.

(5) A lien of an association shall not be granted priority over a prior recorded mortgage or mortgages under this subsection if a prior recorded lien of the association for unpaid assessments has obtained priority over the same recorded mortgage or mortgages as provided in this subsection, for a period of 60 months from the date of recording of the lien granted priority.

(6) When recording a lien which may be granted priority pursuant to this act, an association shall notify, in writing, any holder of a first mortgage lien on the property of the filing of the association lien. An association which exercises a good faith effort but is unable to ascertain the identity of a holder of a prior recorded mortgage on the property will be deemed to be in substantial compliance with this paragraph.

For the purpose of this section, a "customary condominium assessment" shall mean an assessment for periodic payments, due the association for regular and usual operating and common area expenses pursuant to the association's annual budget and shall not include amounts for reserves for contingencies, nor shall it include any late charges, penalties, interest or any fees or costs for the collection or enforcement of the assessment or any lien arising from the assessment. The periodic payments due must be due monthly, or no less frequently than quarter-yearly, as may be acceptable to the Federal National Mortgage Association so as not to disqualify an otherwise superior mortgage on the condominium from purchase by the Federal National Mortgage Association as a first mortgage.

c. Upon any voluntary conveyance of a unit, the grantor and grantee of such unit shall be jointly and severally liable for all unpaid assessments pertaining to such unit duly made by the association or accrued up to the date of such conveyance without prejudice to the right of the grantee to recover from the grantor any amounts paid by the grantee, but the grantee shall be exclusively liable for those accruing while he is the unit owner.

d. Any unit owner or any purchaser of a unit prior to completion of a voluntary sale may require from the association a certificate showing the amount of unpaid assessments pertaining to such unit and the association shall provide such certificate within 10 days after request therefor. The holder of a mortgage or other lien on any unit may request a similar certificate with respect to such unit. Any person other than the unit owner at the time of issuance of any such certificate who relies upon such certificate shall be entitled to rely thereon and his liability shall be limited to the amounts set forth in such certificate.

e. If a mortgagee of a first mortgage of record or other purchaser of a unit obtains title to such unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns shall not be liable for the share of common expenses or other assessments by the association pertaining to such unit or chargeable to the former unit owner which became due prior to acquisition of title as a result of the foreclosure. Any remaining unpaid share of common expenses and other assessments, except assessments derived from late fees or fines, shall be deemed to be common expenses collectible from all of the remaining unit owners including such acquirer, his successors and assigns.

f. Liens for unpaid assessments may be foreclosed by suit brought in the name of the association in the same manner as a foreclosure of a mortgage on real property. The association shall have the power, unless prohibited by the master deed or bylaws to bid on the unit at foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien securing the same. Nothing herein shall alter the status or priority of municipal liens under R.S.54:5-1 et seq.

L.1969,c.257,s.21; amended 1995, c.354, s.4;1996, c.79, s.5;1997, c.190, s.2.

46:8B-22. Effect of sheriff's sale

22. Effect of sheriff's sale. (a) A unit may be sold by the sheriff on execution, free of any claim, not a lien of record, for common expenses or other assessments by the association, but any funds derived from such sale remaining after satisfaction of prior liens and charges but before distribution to the previous unit owner, shall be applied to payment of such unpaid common expenses or other assessments if written notice

thereof shall have been given to the sheriff before distribution. Any such unpaid common expenses which shall remain uncollectible from the former unit owner for a period of more than 60 days after such sheriff's sale may be reassessed by the association as common expenses to be collected from all unit owners including the purchaser who acquired title at the sheriff's sale, his successors and assigns. Unless prohibited by the master deed or bylaws, the association may bid in and purchase the unit at a sheriff's sale, and acquire, hold, lease, mortgage and convey the same.

(b) Notwithstanding any foreclosure, tax sale, or other forced sale of a unit, all applicable provisions of the master deed and bylaws, shall be binding upon any purchaser at such sale to the same extent as they would bind a voluntary grantee except that such purchaser shall not be liable for the share of common expenses or other assessments by the association pertaining to such unit or chargeable to the former owner which became due prior to such sale except as otherwise provided in subsection (a) of this section or section 21 of P.L.1969, c.257 (C.46:8B-21).

L.1969,c.257,s.22; amended 1995,c.354,s.5.

46:8B-23. Blanket mortgage

Notwithstanding any other provision of this act, if the master deed or by-laws so permit, the entire condominium property, or some or all of the units included therein (together with the undivided interests in common elements and limited common elements appurtenant to such units) may be subject to a single or blanket mortgage constituting a first lien thereon created by recordable instrument by all of the owners of the property or units covered thereby; and any unit included under the lien of such mortgage may be sold or otherwise conveyed or transferred subject thereto. The instrument creating any such mortgage shall provide a method whereby any unit owner may obtain a release of his unit (together with the undivided interest in common elements and limited common elements if any, appurtenant thereto) from the lien of such mortgage and a satisfaction and discharge in recordable form, upon payment to the holder of the mortgage of a sum equal to the proportionate share attributable to his unit of the then outstanding balance of unpaid principal and accrued interest and any other charges then due and unpaid. Such proportionate share attributable to each unit shall be the proportion in which all units then subject to the lien of the mortgage share among themselves in liability for common expenses as provided in the master deed or such other reasonable proportion as shall be specifically provided in the mortgage instrument.

L.1969, c. 257, s. 23, eff. Jan. 7, 1970.

46:8B-24. Fire or other casualty

(a) Damage to or destruction of any improvements on the condominium property or any part thereof or to a common element or elements or any part thereof covered by insurance required to be maintained by the association shall be repaired and restored by the association using the proceeds of any such insurance. The unit owners directly affected shall be assessed on an equitable basis for any deficiency and shall share in any excess.

(b) If the proceeds of such insurance shall be inadequate by a substantial amount to cover the estimated cost of restoration of an essential improvement or common element or if such damage shall constitute substantially total destruction of the condominium property or of one or more of the buildings comprising the condominium property or if 75% of the unit owners directly affected by such damage or destruction voting in accordance with the procedures established by the by-laws shall determine not to repair or restore, the association shall proceed to realize upon the salvage value of that portion of the condominium property so damaged or destroyed either by sale or such other means as the association may deem advisable and shall collect the proceeds of any insurance. Thereupon the net proceeds of such sale, together with the net proceeds of such insurance shall be considered as one fund to be divided among the unit owners directly affected by such damage or destruction in proportion to their respective undivided ownership of the common

elements. Any liens or encumbrances on any affected unit shall be relegated to the interest in the fund of the unit owners.

(c) The master deed or the by-laws may make other and different provision covering the eventualities set forth in paragraphs (a) and (b) of this section or covering other results of damage or destruction to any part or all of the condominium property, notwithstanding the provisions of paragraphs (a) and (b). If the master deed or by-laws shall require insurance against fire and other casualty with respect to individual units, it shall also provide for the application of the proceeds and the rights and obligations of unit owners in case of damage or destruction.

L.1969, c. 257, s. 24, eff. Jan. 7, 1970.

46:8B-25. Eminent domain

If all or any part of the common elements shall be taken, injured or destroyed by eminent domain, each unit owner shall be entitled to notice of such taking and to participate through the association in the proceedings incident thereto. Any damages shall be for the taking, injury or destruction as a whole and shall be collected by the association and distributed by it among the unit owners in proportion to each unit owner's undivided interest in such common elements, except to the extent that the association deems it necessary or appropriate to apply them to the repair or restoration of any such injury or destruction.

L.1979, c. 257, s. 25, eff. Jan. 7, 1970.

46:8B-26. Condominium termination

Any condominium property may be removed from the provisions of this act by agreement of unit owners of units to which at least 80% of the votes in the association are allocated, or any larger percentage that the master deed or any amendment thereto specifies. Termination shall be effective upon the filing of a deed of revocation duly executed by unit owners of units to which at least 80% of the votes in the association are allocated, or any larger percentage that the master deed or any amendment thereto specifies or the sole owner of the property and recorded in the same office as the master deed.

L. 1969, c. 257, s. 26, eff. Jan. 7, 1970. Amended by L. 1985, c. 3, s. 1, eff. Jan. 8, 1985.

46:8B-27. Effect of deed of revocation

Upon the recording of such deed of revocation, the unit owners as of the date of recording of such deed shall become tenants-in-common of the property unless otherwise provided in the master deed or deed of revocation, each such unit owner shall thereafter be the owner of an undivided interest in the entire property equal to the percentage of his undivided interest in the common elements before the recording of such deed of revocation, and each lien on an individual unit shall become a lien on the individual undivided interest of the unit owner in the entire property.

L.1969, c. 257, s. 27, eff. Jan. 7, 1970.

46:8B-28. Resubmission

The removal of any property from the provisions of this act shall not bar the resubmission of the property to the provisions of this act in the manner herein provided.

L.1969, c. 257, s. 28, eff. Jan. 7, 1970.

46:8B-29. Zoning

All laws, ordinances and regulations concerning planning, subdivision or zoning, shall be construed and applied with reference to the nature and use of the condominium without regard to the form of ownership. No law, ordinance or regulation shall establish any requirement concerning the use, location, placement or construction of buildings or other improvements which are, or may thereafter be subjected to this act unless such requirement shall be equally applicable to all buildings and improvements which are, or may thereafter be subjected to this act unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then or thereafter to be subjected to this act. No subdivision or planning approval shall be required as a condition precedent to the recording of a master deed or the sale of any unit unless such approval shall also be required for the use or development of the lands described in the master deed in the same manner as therein set forth had such lands not been submitted to this act.

L.1969, c. 257, s. 29, eff. Jan. 7, 1970.

46:8B-30. Partial invalidity

If any provision of this act is held invalid, such invalidity shall not affect other provisions hereof, and to this end the provisions of this act are declared to be severable.

L.1969, c. 257, s. 30, eff. Jan. 7, 1970.

46:8B-31. Legislative findings and declarations

The Legislature finds and declares that many leases involving use of parking, recreational or other common facilities or areas by residents of condominiums were entered into by parties wholly representative of the interests of a condominium developer at a time when the condominium unit owners not only did not control the administration of their condominium but also had little or no voice in such administration. Such leases often contain numerous obligations on the part of either or both a condominium association and condominium unit owners with relatively few obligations on the part of the lessor. Such leases may or may not be unconscionable in any given case. Nevertheless, the Legislature finds that certain onerous obligations and circumstances warrant the establishment of a rebuttable presumption of unconscionability of certain leases, as specified in this act.

The Legislature also finds and declares that many contracts for sale of condominium units, master deeds and association bylaws contain provisions affording the developer or the association a right of first refusal to purchase in the event of resale, gift or devise of condominium units by the purchaser, provisions which are in the financial interest of the developer or the association and are designed to limit the freedom of the purchaser to resell the property as he sees fit. The Legislature finds that the relative balance between the consideration given the financial interests of the developer or the association and the limitations placed upon the property rights of the purchaser contained in such provisions is such as to warrant the establishment of a rebuttable presumption of unconscionability with respect to those master deeds and bylaws, and amendments thereof, adopted prior to the effective date of this amendatory and supplementary act, and to warrant the prohibition of such provisions in contracts for the sale of condominium units executed, and in master deeds and bylaws or amendments of master deeds or bylaws adopted, on or after that date.

L.1979, c. 297, s. 1, eff. Jan. 17, 1980. Amended by L.1980, c. 103, s. 1, eff. Sept. 11, 1980.

46:8B-32. Unconscionability of leases; rebuttable presumption; elements of lease

There is hereby established a rebuttable presumption of unconscionability with respect to leases involving condominium property, including, but not limited to, leases concerning the use by condominium unit owners

of parking, recreational or other common facilities or areas. Such presumption may be rebutted by a lessor by the presentation of evidence of the existence of facts and circumstances sufficient to justify and validate a lease which would otherwise appear to be unconscionable under the provisions of this section. A rebuttable presumption of unconscionability shall arise if one or more of the following elements exist, but the failure of a lease to contain any of the following elements shall neither preclude a determination of its unconscionability nor raise a presumption of its conscionability:

a. The lease was executed by persons none of whom at the time of the execution of the lease were elected by condominium unit owners other than the developer, to represent their interests;

b. The lease requires either the condominium association or the condominium unit owners to pay real estate taxes on the subject real property;

c. The lease requires either the condominium association or the condominium unit owners to insure buildings or other facilities on the subject real property against fire or any other hazard;

d. The lease requires either the condominium association or the condominium unit owners to perform some or all maintenance obligations pertaining to the subject real property or facilities located upon the subject real property;

e. The lease requires either the condominium association or the condominium unit owners to pay rents to the lessor for a period of 10 years or more;

f. The lease provides that failure of the lessee to make payments of rents due under the lease either creates, establishes, or permits establishment of, a lien upon individual condominium units of the condominium to secure claims for rent;

g. The lease requires an annual rental which exceeds 20% of the appraised value of the leased property as improved; provided that for purposes of this subsection "annual rental" means the amount due during the first 12 months of the lease for all units regardless of whether such units were in fact occupied or sold during that period and "appraised value" means the appraised value placed upon the leased property the first tax year after the sale of a unit in the condominium;

h. The lease provides for a periodic rental increase based upon reference to a price index;

i. The lease or other condominium documents require that every transferee of a condominium unit must assume obligations under the lease.

L.1979, c. 297, s. 2, eff. Jan. 17, 1980.

46:8B-33. Severability

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

L.1979, c. 297, s. 3, eff. Jan. 17, 1980.

46:8B-34. Selling price; inclusion of statement of membership fees

The developer shall separately state in the selling price of a unit in a condominium the full membership fee in the condominium association and all recreational membership fees.

L.1979, c. 297, s. 4, eff. Jan. 17, 1980.

46:8B-35. Lease of parking, recreational or other common facility or area for over 20 years; option to renew or purchase

When any parking, recreational or other common facility or area has been leased for the use of the unit owners of a condominium for 20 years or more, the condominium association or the condominium unit owners shall have the option of renewing the lease on the parking, recreational or other common facility or area or of buying such facility or area and subject real property at a conscionable price.

L.1979, c. 297, s. 5, eff. Jan. 17, 1980.

46:8B-36. Master deeds or bylaws of association; rebuttable presumption of unconscionability

There is hereby established a rebuttable presumption of unconscionability with respect to provisions of master deeds or association bylaws recorded prior to the effective date of this act which shall arise whenever such a master deed or by laws shall contain any provision or clause affording the developer or the association a right of first refusal to buy a condominium unit upon resale, gift or devise by the condominium unit owner. Such presumption may be rebutted by the developer or the association by the presentation of evidence of the existence of facts and circumstances sufficient to justify and validate a provision of the master deed or the bylaws which would otherwise appear to be unconscionable under the provisions of this section.

L.1979, c. 297, s. 6, eff. Jan. 17, 1980. Amended by L.1980, c. 103, s. 2, eff. Sept. 11, 1980.

46:8B-37. Application of act

The provisions of this act shall not apply to any lease involving the use of parking, recreational or other common facilities or areas at a condominium project where such parking, recreational or other common facilities have been fully completed and in operation as of the effective date of this act and the lease therefor is duly executed, whether before or after the effective date of this act, by the developer and the association.

L.1979, c. 297, s. 7, eff. Jan. 17, 1980.

46:8B-38. Right of first refusal clause in contract for sale of condominium, master deed or association bylaws; applicability to state or any political subdivision

No contract for the sale of a condominium unit executed on or after the effective date of this amendatory and supplementary act, nor any master deed or association bylaws adopted on or after that date, shall contain a clause or provision affording the developer or the association the right of first refusal to buy a condominium unit upon resale, gift or devise by the condominium unit owner. No master deed or association bylaws, whenever adopted, shall be amended on or after such date to include any such clause or provision affording right of first refusal. This section shall not apply to the State of New Jersey or any political subdivision of this State or any department, division, office, agency or bureau thereof or any authority or instrumentality created thereby if said right is required by State or Federal law.

L.1980, c. 103, s. 3, eff. Sept. 11, 1980.