



STATE OF NEW JERSEY

NJLRC

NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

Relating to

**ISSUES CONCERNING COMMON INTEREST
OWNERSHIP COMMUNITIES**

October, 2007
Current as of 12/31/09

John M. Cannel, Esq., Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 973-648-3123
Email: njlrc@njlrc.org

ISSUES CONCERNING COMMON INTEREST OWNERSHIP COMMUNITIES

Four years ago, the Law Revision Commission released a report recommending a comprehensive revision of the law relating to condominiums and cooperatives. The Legislature considered that report, the Uniform Common Interest Ownership Act (on which the Commission recommendation was based) and other proposals on several occasions during the last few years. None of the comprehensive proposals has been enacted. Revision of the law on common interest ownership communities remains an important priority; a significant percentage of New Jersey residents now live in these communities and the law regulating them is insufficient to deal with problems that arise.

However, the Commission has decided that this is not the time to begin again writing a comprehensive statute. First, the National Conference of Commissioners on Uniform State Laws (NCCUSL) has just begun a project to rewrite its Uniform Common Interest Ownership Act. The NCCUSL product should be reviewed before New Jersey either enacts the old uniform law or writes its own act. In addition, there has been controversy on many aspects of common interest ownership law, especially between representatives of the governing boards of communities and individual unit owners. In the absence of a developed consensus on the substance of the law it is harder for the Commission to make a meaningful contribution.

The Commission decided that there were a few critical issues that require legislation that should not wait until a comprehensive law can be enacted. This Report addresses three issues related to common interest ownership communities. The first is the right to transfer ownership of a unit. Common law has always favored free alienability of real property and disfavored restrictions on transfer. It is important both to unit owners and to the preservation of a free market in units that restrictions be limited to those that are important to the interests of the common interest community.

The second Commission proposal protects the right of a unit owner to live in his unit. New Jersey has taken the lead in protecting tenants from eviction. There is no basis to afford a unit owner less protection. If a landlord should be limited in the bases for eviction of a tenant, a community should be limited similarly in removing a unit owner. A unit owner has all of the interests of a tenant and an additional one, ownership of the unit.

The Commission also recommends a provision limiting the power of the community to regulate a unit owner's conduct in his own unit. A community has a legitimate interest in controlling behavior that takes place on common property or affects others in the community. However, the community should not be involved in controlling private behavior within a unit. In a sense, a common interest community functions like a new kind of governmental unit. Just as there are limits as to what a municipality may regulate, there must be limits on the power of common interest communities. The limits must be based on a balance between the needs of the community as a whole and the legitimate expectations of unit owners.

Restrictions on transfers of ownership and use of units

A common interest property may not restrict the transfer of ownership or lease of a unit except that the master deed or bylaws may:

a. In a cooperative, restrict transfer of ownership of units to satisfy objective, generally applicable criteria to assure that owners are able to meet financial responsibility related to ownership;

b. Restrict leasing to meet requirements that a certain percentage of units be owner occupied if that is necessary to satisfy the requirements of institutions that regularly lend money secured by first mortgages on units in common interest properties or regularly purchase those mortgages;

c. Require certification of a handicap to comply with the purposes of a common interest property established by the master deed as primarily for handicapped persons;

d. Establish a minimum age limit to comply with the purposes of a common interest property established by the master deed as primarily for persons and family members meeting the age requirements of the Federal Fair Housing Act; and

e. Limit transfers to the extent required by State or Federal law.

COMMENT

This section was part of the Commission's 2001 report. It has exceptions to allow cooperatives' ability to enforce financial standards, and to meet the requirements of various federal programs.

Removal of a unit owner

a. A unit owner shall not be removed from a unit in a common interest property except by an ejectment action brought in Superior Court. The Court shall not order the removal of a unit owner from a unit used for residential purposes in an action brought by the management of a common interest property unless the master deed or bylaws provides for removal and one of the following grounds as good cause is established:

(1) The unit owner has failed to pay a judgment for delinquent maintenance fees and assessments due under the master deed or bylaws of the common interest property within 30 days after receiving notice of the entry of the judgment.

(2) The unit owner has willfully or by reason of gross negligence caused or allowed destruction or substantial damage or injury to common elements or other units.

(3) Subject to subsection (c), after written notice to cease, the unit owner, or another person residing in the unit, has continued to substantially impair the peace and quiet of other occupants of the common interest property.

(4) Subject to subsection (c), after written notice to cease, the unit owner, or another person occupying the unit, has continued to substantially violate any of the

common interest property's rules and regulations governing the premises, provided the rules and regulations:

A) are reasonable,

B) were in effect before the unit owner acquired the unit or the unit owner was notified of them in writing,

C) have been enforced consistently.

(5) The common interest property is being terminated in accordance with law.

b. A court order that finds good cause to remove a unit owner:

(1) shall order removal of the unit owner only when other relief would be inadequate to protect the rights of other unit owners;

(2) shall protect the rights of co-owners of the unit from which a unit owner is to be removed,

(3) shall allow reasonable opportunity for the unit owner removed to sell or lease the unit, and

c. if actions of a resident of the unit other than a unit owner are the basis for the ground for removal, instead of ordering removal of the unit owner, shall require the unit owner to pursue all reasonable means to remove the resident.

COMMENT

Subsection (a) is based on relevant portions of 2A:18-61.1 which governs the eviction of tenants from leased premises. Unlike 2A:18-61.1, there is no explicit provision making particular crimes a basis for removal. The commission of crimes in the common interest property or affecting it or other residents would be included in other grounds for removal and any list of specific crimes would fail to include some that should be grounds for removal.

Subsection (b) is new. It is intended to provide extra protections necessary for the ownership rights of the person removed and that person's co-owners.

Regulation of behavior in, or occupancy of, units.

a. The master deed or bylaws of a common interest property may regulate only such behavior in or occupancy of units as may impair the use and enjoyment of other units or the common elements by other unit owners. A copy of regulations on behavior in or occupancy of units shall be provided to any person who enters into a contract to buy a unit.

b. A common interest property may not impose a regulation by amendment to the master deed, bylaws or rules, without reasonable accommodation for practices and uses by unit owners that were permitted at the time the unit owners acquired their units.

c. Any rule or regulation governing behavior in or occupancy of units shall be included in the master deed or bylaws.

COMMENT

This section was part of the 2001 Commission Report. It allows an association to regulate use and behavior in units but restricts the subject of regulations and requires that new regulations affecting established uses accommodate those uses.

Common interest property defined.

A common interest property shall include a condominium and a cooperative.