

PLANNED REAL
ESTATE
DEVELOPMENT FULL
DISCLOSURE ACT

What lake
associations
must do to be
in compliance

PREDFDA

- The Planned Real Estate Development Full Disclosure Act, (“PRDEFDA”) N.J.S.A. 45:22A-45.1 was amended July 13, 2017, with provisions becoming effective November 1, 2017
- Changes came following the court’s decision in the case **Moore v. The Radburn Association, Inc.**, BER-C-394-06 (N.J. Super. Ch. Div. 2008); 997 A.2d 231 (2010)

BIG PICTURE

- The statutory amendments were predominantly to address inequities in the voting process for homeowner association elections, and the manner in which By-Laws are changed.
- However, there were significant changes involving voluntary versus mandatory membership.

PRELIMINARY STATEMENT

- N.J.S.A. 45:22A-45.1(1)(e), provides as follows:
- “The supplement to the “Planned Real Estate Development Full Disclosure Act” (“PREDFDA”), P.L. 1977, c. 419(C. 45:22A-21 et seq.), specifically, P.L. 1993, c. 30(C. 45:22A-43 et seq.), provided all owners and residents in common interest residential communities with specific rights and protections. These rights and protections exist regardless of whether a developer established the community prior to the effective date of PREDFDA. **The supplement was not specific in declaring that all unit owners were members of the association** or in recognizing that, along with certain specific tenant residents, all unit owners were entitled to participate fully in elections of members of the Executive Board;”

LEGISLATIVE POLICY

- N.J.S.A. 45:22A-45.1(l)(g) concluded as follows:
- “It is necessary and in the public interest for the legislature to enact legislation to amend PREDFDA in order to:
- **Establish that all unit owners are members of the association** and provide basic election participation rights for certain residents of common interest communities...”

DEFINITIONS

- An “owner” is defined as “any person or persons who acquire a legal or equitable interest in a unit, lot, or parcel in a planned real estate development...” N.J.S.A. 45:22A-23(d).
- “Planned real estate development” is defined as “any real property situated within the State, whether contiguous or not, which consists of or will consist of, separately owned areas, irrespective of form, be it lots, parcels, units, or interest, and which are offered or disposed of pursuant to a common promotional plan, and providing for common or shared elements or interest in real property.” This definition shall “specifically include, but shall not be limited to...any form of homeowners' association” and “shall be construed liberally to effectuate the purposes of this act.” N.J.S.A. 45:22A-23(h).

DEFINITIONS, CONTINUED

- A “common promotional plan” is defined as “any offer for the disposition of lots, parcels, units or interests of real property by a single person or a group of persons acting in concert, where such lots, parcels, units, or interests are contiguous, or are known, designated or advertised as a common entity or by a common name.” N.J.S.A. 45:22A-23(i).
- A “unit” is defined as “any lot, parcel, unit or interest in a planned real estate development that is, or is intended to be, a separately owned area thereof.” N.J.S.A. 45:22A-23(p).

DEFINITIONS, CONTINUED

- "Association" means "an association for the management of common elements and facilities, organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43)." N.J.S.A. 45:22A-23(p). That section provides that an association shall be organized to manage the common elements and facilities; it may be in any form permitted by law, including a for-profit corporation.
- "Association member" means "the owner of a unit within a planned real estate development, or a unit's tenant to the extent that the governing documents of the planned real estate development permit tenant membership in the association..." N.J.S.A. 45:22A-23(q).

MANDATORY PROVISIONS

- The following are **mandatory** provisions that apply to all associations:
- Board member term cannot be for more than four (4) years (but a member may serve until a successor is duly qualified and elected)
- Advance notice of the election must be provided to all members no later than 30 days prior to the date for the mailing of the notice of the meeting where the election will be heard, which informs members of the right to nominate themselves or others for candidacy on the Board.
- Any member in good standing may be nominated. A member may nominate himself or herself so long as the nomination is made prior to the mailing of the ballots or proxies to the association members. The Board must give members at least 14 days from the mailing of the request for nominations until the expiration of time period in which candidates may be nominated.

MANDATORY PROVISIONS, CONTINUED

- Notice of the election must be in writing and made by personal delivery, mail or electronically no less than 14 nor more than 60 days prior to the meeting at which the election is scheduled. Proxy ballots and absentee ballots must be included unless prohibited by the By-Laws. The candidates must be listed in alphabetical order. Notice is effective when mailed. Electronic notice may be used if the member has previously agreed to accept notice by electronic means.
- Ballots must be used containing the names of all persons nominated.
- All members in good standing must be allowed to vote for any nominated candidate.
- The Executive Board may determine to use an electronic voting means, but is not required to do so.
- Voting must be one vote per property.

PERMISSIBLE BY-LAW PROVISIONS

- It is permissible for the By-Laws to allow members to nominate and vote only for some members of the Executive Board based upon a distribution that allocates votes with approximate proportionality to the number, value or size of units located in a certain geographical areas within the development.
- No more than one owner from a single property may serve on the governing board simultaneously.
- The appointment of Executive Board positions is not allowed unless it is filling the vacancy created by a resignation, death, failure to maintain reasonable qualifications including maintaining good standing, to be an Executive Board member whereby removal following a vote in favor of removal open to all association members in accordance with the terms of the By-Laws.

PROVISIONS REGARDING BOARD MEETINGS

- The By-Laws are required to state that all meetings of the Executive Board, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance by all members and adequate notice of such meeting shall be given to all association members consistent with the By-Laws.
- Executive Board may exclude or restrict attendance at meetings or portions of the 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. Participation of members is at the discretion of the Executive Board.
- At all meetings open to members, minutes must be taken and copies made available to the members before the next open meeting.

MEMBERSHIP MEETINGS AND ASSESSMENTS

- The By-Laws must contain the method of calling meetings of the members and the quorum requirements.
- The By-Laws must contain the manner of collecting from owners their respective shares of the common expenses and the method of distribution to the owners of common surplus.

BY-LAWS AMENDMENTS REQUIREMENTS

- The method by which the By-Laws may be amended must be included in the By-Laws.
- The Executive Board may not amend the By-Laws of the association without a vote of the association members open to all association members **except under the following circumstances:** (a) to the extent necessary to render the **By-Laws consistent state, federal or local law** or (b) after providing notice to all association members of the proposed amendment which notice shall include a ballot to reject the proposed amendment. If the amendment was not made to render the By-Laws consistent with state, federal or local law or if ten percent (10%) of the members vote to reject the amendment within 30 days, the amendment shall be deemed defeated.

RULES AND REGULATIONS

- The By-Laws may provide for a method of the adoption, amendment and enforcement of reasonable administrative Rule and Regulations regarding the operations, use, maintenance and enjoyment of the properties and common elements.

WHAT'S THE DEADLINE?

- This Act is applicable to all Executive Board elections held on or after November 1, 2017.

WHAT DOES THIS MEAN FOR MANDATORY MEMBERSHIP LAKE ASSOCIATIONS?

- By-Laws should be reviewed to make sure you are in compliance with all of the provisions to the 2017 (and 1993) amendments to PREDFDA.
- By-Laws may be changed by Board vote only if the changes are to bring By-Laws in compliance with the law.
- Department of Community Affairs is charged with enforcement of laws regarding homeowner associations

REMINDER-1993 AMENDMENTS

- Association shall provide a “fair and efficient procedure for the resolution of disputes” between individual members and the association, and between individual as an alternative to litigation. (Alternative Dispute Resolution or ADR)
- Board meetings must be open to all members, unless executive session for (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. Participation of members is at the discretion of the Executive Board.

WHAT DOES THIS MEAN FOR VOLUNTARY MEMBERSHIP LAKE ASSOCIATIONS?

- If your lake fits the definitions of PREDFDA, all owners must now be members.
- Impact on prior case law and unreported court decisions
- Impact on pending cases

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