N.J. Stat. § 46:8B-1

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

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§ 46:8B-1. Short title

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

History

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

Annotations

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Notes

Editor's Note:

Child-protection window guard requirements, see 55:13A-7.12 et seq.

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Tax Law: State & Local Taxes: Real Property Tax: Mobilehomes & Mobilehome Parks

Torts: Premises Liability & Property: General Premises Liability: Duties of Care: Duty off Premises: Sidewalks & Streets

Civil Procedure: Justiciability: Standing: General Overview

Under the Condominium Act, N.J. Stat. Ann. § *46:8B-1* et seq., a condominium association lacked standing to pursue claims against developers for damages resulting from construction defects to the interior of the condominium units because claims involved damage to individual units rather than to common elements; thus, the complained of defects were not matters of common interest, and were of a type that only individual unit owners could pursue against a developer. *Soc'y Hill Condo. Ass'n v. Soc'y Hill Assocs., 347 N.J. Super. 163, 789 A.2d 138, 2002 N.J. Super. LEXIS 42 (App.Div. 2002)*.

Civil Procedure: Pleading & Practice: Defenses, Demurrers & Objections: Failures to State Claims

In a suit wherein condominium unit owners sought control of the condominium association's governing board, the trial court erred by dismissing the unit owners' complaint for failure to state a cause of action because a majority vote of unit owners was not required to accept control of the association before the court was empowered to implement the transfer of control mandated by the New Jersey Condominium Act, N.J. Stat. Ann. § *46:8B-12.1(a)*, for situations with a dormant developer. *Flinn v. Amboy Nat. Bank, 436 N.J. Super. 274, 93 A.3d 422, 2014 N.J. Super. LEXIS 93 (App.Div. 2014)*.

Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability

Superior Court of New Jersey, Appellate Division holds that the term housing-related disputes in the Condominium Act, N.J. Stat. Ann. § *46:8B-14(k)*, refers to any dispute arising directly from the condominium relationship and is to be construed broadly. *Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.)*, certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

Trial court erred by granting a condominium association summary judgment in its suit against two unit owners for unpaid special assessments, because the term housing-related disputes set forth in the Condominium Act, N.J. Stat. Ann. § *46:8B-14(k)*, was construed broadly and referred to any dispute arising from the condominium

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relationship, including the special assessment disagreement between the parties, therefore, the dispute was subject to arbitration. *Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.)*, certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

Civil Rights Law: Contractual Relations & Housing: Fair Housing Rights: Disability Discrimination

New Jersey's Condominium Act, N.J. Stat. Ann. § *46:8B-1* et seq., imposes a duty upon a condominium association to ensure that the condominium's common elements are managed so as to comply with the Fair Housing Amendment Act. This duty would include allowing a handicapped unit owner the exclusive use of a parking spot close to his home. *Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997)*.

Insurance Law: Claims & Contracts: Subrogation: Contractual Subrogation

Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since the association's by-laws compelled a waiver of such claims. *Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018)*.

Real Property Law: Common Interest Communities: Condominiums: General Overview

Under the Condominium Act, N.J. Stat. Ann. § *46:8B-1* et seq., a condominium association lacked standing to pursue claims against developers for damages resulting from construction defects to the interior of the condominium units because claims involved damage to individual units rather than to common elements; thus, the complained of defects were not matters of common interest, and were of a type that only individual unit owners could pursue against a developer. *Soc'y Hill Condo. Ass'n v. Soc'y Hill Assocs., 347 N.J. Super. 163, 789 A.2d 138, 2002 N.J. Super. LEXIS 42 (App.Div. 2002)*.

Condominium association lacked standing to pursue claims against developers for damages resulting from construction defects because claims involved damage to individual units rather than to common elements. *Soc'y Hill Condo. Ass'n v. Soc'y Hill Assocs., 347 N.J. Super. 163, 789 A.2d 138, 2002 N.J. Super. LEXIS 42 (App.Div. 2002)*.

Trial court erred in requiring condominium owners to irrevocably delegate their powers over common elements to an umbrella association, because the New Jersey Condominium Act, N.J. Stat. Ann. § *46:8B-1* et seq., did not permit such associations. *Fox v. Kings Grant Maint. Ass'n, 167 N.J. 208, 770 A.2d 707, 2001 N.J. LEXIS 520 (N.J. 2001)*.

Under the Condominium Act, N.J. Stat. Ann. § *46:8B-1* the condominium association had a fiduciary duty to the condominium owner where the association allowed a third party management company to use the common elements of the building and the condominium owner asked the association to intervene on his behalf to insure his participation in the management company's hotel-type rental program; the association had a fiduciary obligation to protect each member's right to participate in that program on fair and equal terms. *Sang-Hoon Kim v. Flagship Condo. Owners Ass'n, 327 N.J. Super. 544, 744 A.2d 227, 2000 N.J. Super. LEXIS 44 (App.Div.)*, certif. denied, *164 N.J. 190, 752 A.2d 1292, 2000 N.J. LEXIS 565 (N.J. 2000)*.

Where there were some condominiums located within a gated community, the gated community in its entirety was a condominium association and was not governed by the New Jersey Condominium Act, N.J. Stat. Ann. § *46:8B-1* to -38, and a trial judge erred in ruling that the Condominium Act "indirectly" governed the community. *State v. Panther Valley Prop. Owners Ass'n, 307 N.J. Super. 319, 704 A.2d 1010, 1998 N.J. Super. LEXIS 20 (App.Div. 1998)*.

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Merely because there are some condominiums that are governed by the New Jersey Condominium Act, N.J. Stat. Ann. § 46:8B-1 to -38, within a gated community does not render the community in its entirety to be a condominium association. State v. Panther Valley Prop. Owners Ass'n, 307 N.J. Super. 319, 704 A.2d 1010, 1998 N.J. Super. LEXIS 20 (App.Div. 1998).

New Jersey's Condominium Act, N.J. Stat. Ann. § 46:8B-1 et seq., imposes a duty upon a condominium association to ensure that the condominium's common elements are managed so as to comply with the Fair Housing Amendment Act. This duty would include allowing a handicapped unit owner the exclusive use of a parking spot close to his home. Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997).

Summary judgment granted in favor of a condominium council and owners' association in an action to collect overdue common expenses from a condominium owner included the amount of the common expenses plus interest and reasonable attorneys fees but the New Jersey Condominium Act, N.J. Stat. Ann. § 46:8B-1 et seq., did not authorize a condominium association to levy fines, impose penalties or late fees for the failure to pay common expenses. Holbert v. Great Gorge Village S. Condominium Council, 281 N.J. Super. 222, 656 A.2d 1315, 1994 N.J. Super. LEXIS 616 (Ch.Div. 1994).

Condominium association may charge a rental fee, provided the fee is reasonably related to the actual cost of reviewing the rental transaction and inspection of the rented unit; costs attendant to such review and inspection should not be deemed "common expenses," because they are not incurred for a beneficial object common to all of the owners within the complex, and should be recouped by the association by a "remedial assessment" similar to that made against a unit owner for minor repairs to his unit. Chin v. Coventry Square Condominium Ass'n, 270 N.J. Super. 323, 637 A.2d 197, 1994 N.J. Super. LEXIS 34 (App.Div. 1994).

Condominium unit owner's rights were both protected and limited by the master deed and the by-laws incorporated in it under the Condominium Act, N.J. Stat. Ann. § 46:8B-1 et seq., specifically N.J. Stat. Ann. § 46:8B-3(m) and 9(i); as such, the by-laws specified the procedure to be followed for obtaining permission to make a structural change in a unit and were reasonable and not arbitrary. Courts at Beachgate v. Bird, 226 N.J. Super. 631, 545 A.2d 243, 1988 N.J. Super. LEXIS 272 (Ch.Div. 1988).

Where the owner converted apartments into condominiums and, following administrative approval for registration of the conversion, recorded a master deed creating and establishing the condominiums, each unit constituted a separate parcel of real property; taxes were proper on each unit as a single parcel, even though the owner was not able to sell the units and was still renting them. Cigolini Associates v. Fairview, 208 N.J. Super. 654, 506 A.2d 811, 1986 N.J. Super. LEXIS 1173 (App.Div. 1986).

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § 46:8B-4 and N.J. Stat. Ann. § 46:8B-8, provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § 45:22A-28, N.J. Stat. Ann. § 45:22A-29, and N.J. Stat. Ann. § 45:22A-30, provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. Troy, Ltd. v. Renna, 727 F.2d 287, 1984 U.S. App. LEXIS 25937 (3d Cir. N.J. 1984).

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since the association's by-laws compelled a waiver of such claims. Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018).

In a suit wherein condominium unit owners sought control of the condominium association's governing board, the trial court erred by dismissing the unit owners' complaint for failure to state a cause of action because a majority

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vote of unit owners was not required to accept control of the association before the court was empowered to implement the transfer of control mandated by the New Jersey Condominium Act, N.J. Stat. Ann. § *46:8B-12.1(a)*, for situations with a dormant developer. *Flinn v. Amboy Nat. Bank, 436 N.J. Super. 274, 93 A.3d 422, 2014 N.J. Super. LEXIS 93 (App.Div. 2014)*.

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If a prior owner knew or reasonably should have known of a basis for a construction-defect action, the limitations period began at that point. *2017 N.J. LEXIS 845*.

Construction defect cause of action accrues at the time that the building's original or subsequent owners first knew or, through the exercise of reasonable diligence, should have known of the basis for a claim and from that point, the plaintiff has six years to file a claim under *N.J. Stat. Ann. § 2A:14-1* and a subsequent owner stands in no better position than a prior owner in calculating the limitations period. *2017 N.J. LEXIS 845*.

Appellate court properly upheld the grant of summary judgment to a condominium association in a pedestrian's suit for negligence against it after falling and being injured on an icy sidewalk abutting the condominium complex as the condominium complex was residential and, therefore, no sidewalk liability attached for the injury to the pedestrian. *Luchejko v. City of Hoboken, 207 N.J. 191, 23 A.3d 912, 2011 N.J. LEXIS 789 (N.J. 2011)*.

Condominium association is residential and, therefore, is not subject to sidewalk liability under long-standing New Jersey precedent that residential property owners stand on different footing than commercial owners in sidewalk liability cases. *Luchejko v. City of Hoboken, 207 N.J. 191, 23 A.3d 912, 2011 N.J. LEXIS 789 (N.J. 2011)*.

Real Property Law: Common Interest Communities: Condominiums: Formation

Manufactured homes owned under a condominium arrangement in accordance with N.J. Stat. Ann. § *46:8B-1* et seq., may qualify as a mobile home park under the Manufactured Home Taxation Act, N.J. Stat. Ann. § *54:4-1.2* et seq. *Bayshore Woods, Inc. v. Lower, 8 N.J. Tax 546, 1986 N.J. Tax LEXIS 7 (Tax Ct. Nov. 5, 1986)*.

Real Property Law: Common Interest Communities: Cooperatives: Cooperative Housing Associations

N.J. Stat. Ann. § *46:8B-1*, applicable to individual condominium units, does not apply to cooperative apartments; cooperative apartments must be valued as a whole. *Berkley Arms Apartment Corp. v. Hackensack City, 6 N.J. Tax 260, 1983 N.J. Tax LEXIS 5 (Tax Ct. Dec. 15, 1983)*.

Real Property Law: Common Interest Communities: Homeowners Associations

Under the Condominium Act, N.J. Stat. Ann. § *46:8B-1* et seq., a condominium association lacked standing to pursue claims against developers for damages resulting from construction defects to the interior of the condominium units because claims involved damage to individual units rather than to common elements; thus, the

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Real Property Law: Torts: Construction Defects

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Where the owner converted apartments into condominiums and, following administrative approval for registration of the conversion, recorded a master deed creating and establishing the condominiums, each unit constituted a separate parcel of real property; taxes were proper on each unit as a single parcel, even though the owner was not able to sell the units and was still renting them. *Cigolini Associates v. Fairview, 208 N.J. Super. 654, 506 A.2d 811, 1986 N.J. Super. LEXIS 1173 (App.Div. 1986)*.

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Torts: Premises Liability & Property: General Premises Liability: Duties of Care: Duty off Premises: Sidewalks & Streets

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Research References & Practice Aids

Cross References:

Definitions, see *2A:18-61.7*.

Definitions, see *2A:42-103*.

Definitions; disclosure statements to senior citizen housing residents, see *2A:42-113*.

Definitions relative to construction liens, see *2A:44A-2*.

Lien entitlement for work, services, etc.; terms defined, see *2A:44A-3*.

Mortgage deemed first lien., see *17:12B-11*.

Definitions relative to lifeguard and first aid personnel requirements at certain swimming areas, see *26:4A-4*.

Definitions; host community benefit, see *40:14A-8.1*.

Definitions; host community benefit., see *40:14B-23.1*.

Definitions, see *40:37A-107*.

Family day care homes permitted use in residential districts; definitions, see *40:55D-66.5b*.

Definitions, see *40:67-23.2*.

Conveyed condominium units, tax exemption, conditions, see *40A:20-14*.

Definitions, see *40A:21-3*.

Definitions, see *45:15-16.28*.

Public offering, disclosure statements; requirements, see *45:15-16.59*.

Definitions, see *45:22A-23*.

Landlord, project defined, see *46:8-27*.

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

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Master deed, contents., see *46:8B-9*.

Powers of association, see *46:8B-15*.

Certain owners of foreclosed property required to file contact information, see *46:10B-51.1*.

Eligibility for Tenants' Lifeline Assistance Program, see *48:2-29.32*.

Definitions, see *52:18A-78.2*.

Apartments created under Horizontal Property Act or unit created under Condominium Act as constituting parcel of real property, see *52:18A-78.23a*.

"Residential property" defined; tax credit for certain principal residences, see *52:27BBB-56*.

"Dwelling house" defined, see *54:4-3.33*.

Definitions, see *54:4-3.140*.

Definitions relative to homestead credit act, see *54:4-8.58*.

Definitions relative to homestead property tax reimbursement, see *54:4-8.67*.

Notification to director of proposed sale, transfer, assignment of business assets; claim for State taxes; exemptions, see *54:50-38*.

Definitions relative to residential property taxes, see *54A:3A-16*.

Definitions, see *55:13A-3*.

Administrative Code:

N.J.A.C. 11:5-9.2 (2013), CHAPTER REAL ESTATE COMMISSION, Definitions.

N.J.A.C. 11:5-9A.6 (2013), CHAPTER REAL ESTATE COMMISSION, Public offering statements.

N.J.A.C. 5:10-4.1 (2013), CHAPTER MAINTENANCE OF HOTELS AND MULTIPLE DWELLINGS, Concurrent responsibilities.

N.J.A.C. 5:24-1.2 (2013), CHAPTER CONDOMINIUM, FEE SIMPLE AND COOPERATIVE CONVERSION AND MOBILE HOME PARK RETIREMENT, Procedures; definitions.

N.J.A.C. 8:26-1.3 (2013), CHAPTER PUBLIC RECREATIONAL BATHING, Definitions.

NJ ICLE:

Commercial Real Estate Transactions in New Jersey 7.6 Condominium Documents

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N.J. Stat. § 46:8B-2

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§ 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.

History

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

Annotations

Notes

Editor's Note:

Child-protection window guard requirements, see 55:13A-7.12 et seq.

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N.J. Stat. § 46:8B-3

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§ 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;

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(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.

History

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

Annotations

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Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

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Torts: Premises Liability & Property: General Premises Liability: Duties of Care: Duty off Premises: Sidewalks & Streets

Insurance Law: Claims & Contracts: Subrogation: Contractual Subrogation

Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since the association's by-laws compelled a waiver of such claims. *Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018)*.

Insurance Law: General Liability Insurance: Persons Insured: Additional Parties

Insurer that issued a policy to a condominium association was obligated to insure unit owners for liability arising out of a deck collapse because (1) an individual unit owner was an additional insured under the policy with respect to liability arising out of the ownership of a portion of the premises which was not reserved for that unit owner's exclusive use; (2) the collapse occurred in the deck's support structure; and (3) the support structure was a common element within the meaning of N.J. Stat. Ann. § *46:8B-3(d)* where the owners' easement did not extend beyond the use of the surface of the deck. *Alexander v. Nat'l Fire Ins., 454 F.3d 214, 2006 U.S. App. LEXIS 17491 (3d Cir. Pa. 2006)*.

Real Property Law: Common Interest Communities: Condominiums: General Overview

Phantom condominium units are subject to real estate tax, and to foreclosure if taxes are unpaid; and the association, as distinct from unit-owners, is not entitled to personal notice. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Official version to be obtained from Lexis Nexis, www.lexis.com

Phantom condominium unit-owners may be liable for common area assessments. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Insurer that issued a policy to a condominium association was obligated to insure unit owners for liability arising out of a deck collapse because (1) an individual unit owner was an additional insured under the policy with respect to liability arising out of the ownership of a portion of the premises which was not reserved for that unit owner's exclusive use; (2) the collapse occurred in the deck's support structure; and (3) the support structure was a common element within the meaning of N.J. Stat. Ann. § *46:8B-3(d)* where the owners' easement did not extend beyond the use of the surface of the deck. *Alexander v. Nat'l Fire Ins., 454 F.3d 214, 2006 U.S. App. LEXIS 17491 (3d Cir. Pa. 2006)*.

Homeowner was properly granted summary judgment in his suit seeking reimbursement of $ 750 he paid to his condominium association, deemed a non-refundable capital contribution assessed against a homeowner when he acquired title to his home, as such violated N.J. Stat. Ann. § *46:8B-17*, which required that the common expenses for maintenance of a condominium's common elements, as defined under N.J. Stat. Ann. § *46:8B-3*, be charged to all unit owners; furthermore, the association failed to show that the assessment was justified by any extra expenses it incurred upon a transfer of title to a unit. *Micheve, L.L.C. v. Wyndham Place at Freehold Condominium Ass'n, 381 N.J. Super. 148, 885 A.2d 35, 2005 N.J. Super. LEXIS 318 (App.Div. 2005)*, certif. denied, *186 N.J. 256, 893 A.2d 723, 2006 N.J. LEXIS 361 (N.J. 2006)*.

Condominium parking lots in which spaces, of which there were not enough, were assigned to unit owners by the condominium association on the basis of seniority, were common areas and, therefore, were not subject by a municipality to property tax assessment under N.J. Stat. Ann. § *46:8B-3(d)*; the allocation of the available parking spaces among condominium owners did not specifically reserve or limit use of the parking lot to a particular group or classification of owners. *City of Atl. City v. Warwick Condo. Ass'n, 334 N.J. Super. 258, 758 A.2d 1136, 2000 N.J. Super. LEXIS 353 (App.Div. 2000)*.

In a dispute between a condominium unit owner and the condominium association, an underground storage tank (UST), dedicated to a single unit and buried in the ground outside of that unit, was not part of the "common elements" pursuant to N.J. Stat. Ann. § *46:8B-3(d)(ii)* absent specific mention in the condominium documents where each UST was specifically reserved to serve a particular unit and was intended to constitute an essential and permanent part of the heating facility of the unit. *Ellenheath Condo. Ass'n v. Pearlman, 294 N.J. Super. 381, 683 A.2d 582, 1996 N.J. Super. LEXIS 394 (App.Div. 1996)*, certif. denied, *149 N.J. 33, 692 A.2d 47, 1997 N.J. LEXIS 1342 (N.J. 1997)*.

Condominium association may charge a rental fee, provided the fee is reasonably related to the actual cost of reviewing the rental transaction and inspection of the rented unit; costs attendant to such review and inspection should not be deemed "common expenses," because they are not incurred for a beneficial object common to all of the owners within the complex, and should be recouped by the association by a "remedial assessment" similar to that made against a unit owner for minor repairs to his unit. *Chin v. Coventry Square Condominium Ass'n, 270 N.J. Super. 323, 637 A.2d 197, 1994 N.J. Super. LEXIS 34 (App.Div. 1994)*.

Condominium unit owner's rights were both protected and limited by the master deed and the by-laws incorporated in it under the Condominium Act, N.J. Stat. Ann. § *46:8B-1* et seq., specifically N.J. Stat. Ann. § *46:8B-3(m)* and 9(i); as such, the by-laws specified the procedure to be followed for obtaining permission to make a structural change in a unit and were reasonable and not arbitrary. *Courts at Beachgate v. Bird, 226 N.J. Super. 631, 545 A.2d 243, 1988 N.J. Super. LEXIS 272 (Ch.Div. 1988)*.

Individual ownership of units in a condominium development was permissible because under N.J. Stat. Ann. § 46:8B-3d(iii), the variety in appearance could very likely not be prohibited by a township and the aesthetic concerns voiced by the township furthered no legitimate municipal purpose. *Bonner Properties, Inc. v. Planning Bd. of Franklin, 185 N.J. Super. 553, 449 A.2d 1350, 1982 N.J. Super. LEXIS 876 (Law Div. 1982)*.

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Lease agreements in which condominium owners agreed to lease common elements of the condominium complex, including the pool and recreation facilities, from seller were invalid because they were obtained by fraud; however, those owners who were represented by counsel could not recover on the fraud theory because they could not allege the essential element of reliance. *Berman v. Gurwicz, 189 N.J. Super. 89, 458 A.2d 1311, 1981 N.J. Super. LEXIS 863 (Ch.Div. 1981)*, aff'd, *189 N.J. Super. 49, 458 A.2d 1289, 1983 N.J. Super. LEXIS 810 (App.Div. 1983)*.

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since the association's by-laws compelled a waiver of such claims. *Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018)*.

Homeowner association was not the type of association contemplated by the New Jersey Condominium Act. *In re Johnson, 2014 Bankr. LEXIS 2657 (Bankr. D.N.J. June 16, 2014)*.

Condominium association had standing to pursue Consumer Fraud Act claims for construction defects resulting in water damage; however, the association lacked standing to sue for damages to the unit windows because they were not common elements pursuant to N.J. Stat. Ann. § *46:8B-3*. *Belmont Condominium Ass'n, Inc. v. Geibel, 432 N.J. Super. 52, 74 A.3d 10, 2013 N.J. Super. LEXIS 105 (App.Div.)*, certif. denied, *216 N.J. 366, 80 A.3d 747, 2013 N.J. LEXIS 1280 (N.J. 2013)*.

Condominium association is residential and, therefore, is not subject to sidewalk liability under long-standing New Jersey precedent that residential property owners stand on different footing than commercial owners in sidewalk liability cases. *Luchejko v. City of Hoboken, 207 N.J. 191, 23 A.3d 912, 2011 N.J. LEXIS 789 (N.J. 2011)*.

Appellate court properly upheld the grant of summary judgment to a condominium association in a pedestrian's suit for negligence against it after falling and being injured on an icy sidewalk abutting the condominium complex as the condominium complex was residential and, therefore, no sidewalk liability attached for the injury to the pedestrian. *Luchejko v. City of Hoboken, 207 N.J. 191, 23 A.3d 912, 2011 N.J. LEXIS 789 (N.J. 2011)*.

Harmonization of the Municipal Land Use Law (MLUL), N.J. Stat. Ann. §§ *40:55D-1* — *40:55D-163*, with the Condominium Act, N.J. Stat. Ann. §§ *46:8B-1* to *46:8B-38*, invests a condominium association, not individual condominium unit owners, with the right to participate in a zoning protest petition pursuant to the MLUL, N.J. Stat. Ann. § *40:55D-63*. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

Trial court properly determined that a condominium association, not individual condominium unit owners, had the right to participate in a zoning protest petition pursuant to the Municipal Land Use Law (MLUL), N.J. Stat. Ann. § *40:55D-63*, but the amended zoning ordinance was declared invalid for the planning board's failure to follow the MLUL, N.J. Stat. Ann. § *40:55D-26(a)*, particularly because the borough failed to review the report of the planning board, which required, at minimum, an acknowledgment on the record that the report was reviewed. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

Under N.J. Stat. Ann. § *46:8B-3(e)*, a mortgagee in possession was liable for delinquent condominium charges, which had accrued against the property's legal owner, for services and utilities furnished during the mortgagee's possession and control of the premises, even though he was not the legal owner of the condominium units. *Woodview Condominium Ass'n, Inc. v. Shanahan, 391 N.J. Super. 170, 917 A.2d 790, 2007 N.J. Super. LEXIS 53 (App.Div. 2007)*.

Nothing in N.J. Stat. Ann. § *46:8B-21* suggests that the limited super priority is a condominium association's exclusive remedy for unpaid assessments accrued during the tenure of a mortgagee in possession, or restricts the association's ability to further seek a money judgment against that defaulting party; accordingly, N.J. Stat. Ann. §

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46:8B-21 is not a statutory bar to payment of common charges under N.J. Stat. Ann. § 46:8B-3(e) by a mortgagee in possession during the pendency of foreclosure proceedings. Woodview Condominium Ass'n, Inc. v. Shanahan, 391 N.J. Super. 170, 917 A.2d 790, 2007 N.J. Super. LEXIS 53 (App.Div. 2007).

Real Property Law: Common Interest Communities: Homeowners Associations

Homeowner association was not the type of association contemplated by the New Jersey Condominium Act. In re Johnson, 2014 Bankr. LEXIS 2657 (Bankr. D.N.J. June 16, 2014).

Although N.J. Stat. Ann. § 46:8B-3(k) defined limited common elements as exclusive, the master deed provided that structural modification of limited common elements could be assessed to all owners; therefore, owner had to help pay for balcony replacements. Davis v. Metuchen Gardens Condo. Ass'n, 347 N.J. Super. 345, 790 A.2d 184, 2002 N.J. Super. LEXIS 55 (App.Div. 2002).

Real Property Law: Construction Law: Defects

Condominium association had standing to pursue Consumer Fraud Act claims for construction defects resulting in water damage; however, the association lacked standing to sue for damages to the unit windows because they were not common elements pursuant to N.J. Stat. Ann. § 46:8B-3. Belmont Condominium Ass'n, Inc. v. Geibel, 432 N.J. Super. 52, 74 A.3d 10, 2013 N.J. Super. LEXIS 105 (App.Div.), certif. denied, *216 N.J. 366, 80 A.3d 747, 2013 N.J. LEXIS 1280 (N.J. 2013)*.

Real Property Law: Financing: Mortgages & Other Security Instruments: Mortgagee's Interests

Under N.J. Stat. Ann. § 46:8B-3(e), a mortgagee in possession was liable for delinquent condominium charges, which had accrued against the property's legal owner, for services and utilities furnished during the mortgagee's possession and control of the premises, even though he was not the legal owner of the condominium units. Woodview Condominium Ass'n, Inc. v. Shanahan, 391 N.J. Super. 170, 917 A.2d 790, 2007 N.J. Super. LEXIS 53 (App.Div. 2007).

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Real Property Law: Landlord & Tenant: Lease Agreements: Residential Leases

Lease agreements in which condominium owners agreed to lease common elements of the condominium complex, including the pool and recreation facilities, from seller were invalid because they were obtained by fraud; however, those owners who were represented by counsel could not recover on the fraud theory because they could not allege the essential element of reliance. Berman v. Gurwicz, 189 N.J. Super. 89, 458 A.2d 1311, 1981 N.J. Super. LEXIS 863 (Ch.Div. 1981), aff'd, 189 N.J. Super. 49, 458 A.2d 1289, 1983 N.J. Super. LEXIS 810 (App.Div. 1983).

Real Property Law: Purchase & Sale: Remedies: Specific Performance

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Summary judgment for the purchaser in an action for specific performance of a contract for the sale of a designated condominium unit was proper; the contract was enforceable through specific performance without regard to any issues relating to the unit's uniqueness. *Pruitt v. Graziano, 215 N.J. Super. 330, 521 A.2d 1313, 1987 N.J. Super. LEXIS 1047 (App.Div. 1987)*.

Real Property Law: Zoning & Land Use: Ordinances

Harmonization of the Municipal Land Use Law (MLUL), N.J. Stat. Ann. §§ *40:55D-1* — *40:55D-163*, with the Condominium Act, N.J. Stat. Ann. §§ *46:8B-1* to *46:8B-38*, invests a condominium association, not individual condominium unit owners, with the right to participate in a zoning protest petition pursuant to the MLUL, N.J. Stat. Ann. § *40:55D-63*. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

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Tax Law: State & Local Taxes: Real Property Tax: Assessment & Valuation: General Overview

Phantom condominium units are subject to real estate tax, and to foreclosure if taxes are unpaid; and the association, as distinct from unit-owners, is not entitled to personal notice. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Phantom condominium unit-owners may be liable for common area assessments. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Condominium parking lots in which spaces, of which there were not enough, were assigned to unit owners by the condominium association on the basis of seniority, were common areas and, therefore, were not subject by a municipality to property tax assessment under N.J. Stat. Ann. § *46:8B-3(d)*; the allocation of the available parking spaces among condominium owners did not specifically reserve or limit use of the parking lot to a particular group or classification of owners. *City of Atl. City v. Warwick Condo. Ass'n, 334 N.J. Super. 258, 758 A.2d 1136, 2000 N.J. Super. LEXIS 353 (App.Div. 2000)*.

Torts: Business Torts: Fraud & Misrepresentation: General Overview

Lease agreements in which condominium owners agreed to lease common elements of the condominium complex, including the pool and recreation facilities, from seller were invalid because they were obtained by fraud; however, those owners who were represented by counsel could not recover on the fraud theory because they could not allege the essential element of reliance. *Berman v. Gurwicz, 189 N.J. Super. 89, 458 A.2d 1311, 1981 N.J. Super. LEXIS 863 (Ch.Div. 1981)*, aff'd, *189 N.J. Super. 49, 458 A.2d 1289, 1983 N.J. Super. LEXIS 810 (App.Div. 1983)*.

Torts: Premises Liability & Property: General Premises Liability: Duties of Care: Duty off Premises: Sidewalks & Streets

Condominium association is residential and, therefore, is not subject to sidewalk liability under long-standing New Jersey precedent that residential property owners stand on different footing than commercial owners in sidewalk liability cases. *Luchejko v. City of Hoboken, 207 N.J. 191, 23 A.3d 912, 2011 N.J. LEXIS 789 (N.J. 2011)*.

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Research References & Practice Aids

Administrative Code:

N.J.A.C. 5:10-2.2 (2013), CHAPTER MAINTENANCE OF HOTELS AND MULTIPLE DWELLINGS, Definitions.

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End of Document

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N.J. Stat. § 46:8B-4

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

LexisNexis® New Jersey Annotated Statutes > Title 46. Property (Subts. 1 — 6) > Subtitle 2. Real Property Only (Chs. 3 — 11) > Chapter 8B. Condominiums (Arts. I — VIII) > Article I. General Provisions (§§ 46:8B-1 — 46:8B-7)

§ 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.

History

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

Annotations

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Civil Procedure: Class Actions: Derivative Actions: General Overview

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Unit owner could sue the developer on behalf of the condominium association irrespective of its governing board's willing to sue during the period of time that the condominium association remained under the control of the developer; in this situation, *N.J. Ct. R. 4:32-5* would be applicable. *Siller v. Hartz Mountain Associates, 93 N.J. 370, 461 A.2d 568, 1983 N.J. LEXIS 2713 (N.J.)*, cert. denied, *464 U.S. 961, 104 S. Ct. 395, 78 L. Ed. 2d 337, 1983 U.S. LEXIS 2269 (U.S. 1983)*.

Insurance Law: Claims & Contracts: Subrogation: Contractual Subrogation

Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since the association's by-laws compelled a waiver of such claims. *Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018)*.

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Phantom condominium unit-owners may be liable for common area assessments. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Under N.J. Stat. Ann. § *46:8B-4*, each condominium unit was a separate parcel of real property which its owners could treat with in the same way as other property owners; when plaintiff owners established that the changes they made to their unit would not adversely impact any other interests, the trial court erred in ordering them to remove the modifications they had made. *Billig v. Buckingham Towers Condominium Ass'n I, 287 N.J. Super. 551, 671 A.2d 623, 1996 N.J. Super. LEXIS 86 (App.Div. 1996)*.

Condominium association's rules, which charged nonresident unit owners higher monthly parking fees than resident owners and required new owners to occupy their units at least a year before leasing them, were invalid because the association exceeded its authority under the Condominium Act, N.J. Stat. Ann. § *46:8B-1* et seq. *Thanasoulis v. Winston Towers 200 Asso., 110 N.J. 650, 542 A.2d 900, 1988 N.J. LEXIS 65 (N.J. 1988)*.

Summary judgment for the purchaser in an action for specific performance of a contract for the sale of a designated condominium unit was proper; the contract was enforceable through specific performance without regard to any issues relating to the unit's uniqueness. *Pruitt v. Graziano, 215 N.J. Super. 330, 521 A.2d 1313, 1987 N.J. Super. LEXIS 1047 (App.Div. 1987)*.

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § *46:8B-4* and N.J. Stat. Ann. § *46:8B-8*, provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § *45:22A-28*, N.J. Stat. Ann. § *45:22A-29*, and N.J. Stat. Ann. § *45:22A-30*, provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. *Troy, Ltd. v. Renna, 727 F.2d 287, 1984 U.S. App. LEXIS 25937 (3d Cir. N.J. 1984)*.

Under the Condominium Act, N.J. Stat. Ann. §§ *46:8B-1* et seq. a rent control ordinance did not apply to owners of one or two condominium units in a building. *AMN, Inc. of New Jersey v. South Brunswick Rent Leveling Bd., 93 N.J. 518, 461 A.2d 1138, 1983 N.J. LEXIS 2727 (N.J. 1983)*.

Unit owners could maintain individual causes of action against the developers based upon damages to their individual units. *Siller v. Hartz Mountain Associates, 93 N.J. 370, 461 A.2d 568, 1983 N.J. LEXIS 2713 (N.J.)*, cert. denied, *464 U.S. 961, 104 S. Ct. 395, 78 L. Ed. 2d 337, 1983 U.S. LEXIS 2269 (U.S. 1983)*.

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Unit owner could sue the developer on behalf of the condominium association irrespective of its governing board's willing to sue during the period of time that the condominium association remained under the control of the developer; in this situation, *N.J. Ct. R. 4:32-5* would be applicable. *Siller v. Hartz Mountain Associates, 93 N.J. 370, 461 A.2d 568, 1983 N.J. LEXIS 2713 (N.J.)*, cert. denied, *464 U.S. 961, 104 S. Ct. 395, 78 L. Ed. 2d 337, 1983 U.S. LEXIS 2269 (U.S. 1983)*.

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Unit owner could sue the developer on behalf of the condominium association irrespective of its governing board's willing to sue during the period of time that the condominium association remained under the control of the developer; in this situation, *N.J. Ct. R. 4:32-5* would be applicable. *Siller v. Hartz Mountain Associates, 93 N.J. 370, 461 A.2d 568, 1983 N.J. LEXIS 2713 (N.J.)*, cert. denied, *464 U.S. 961, 104 S. Ct. 395, 78 L. Ed. 2d 337, 1983 U.S. LEXIS 2269 (U.S. 1983)*.

Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: General Overview

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § *46:8B-4* and N.J. Stat. Ann. § *46:8B-8*, provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § *45:22A-28*, N.J. Stat. Ann. § *45:22A-29*, and N.J. Stat. Ann. § *45:22A-30*, provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. *Troy, Ltd. v. Renna, 727 F.2d 287, 1984 U.S. App. LEXIS 25937 (3d Cir. N.J. 1984)*.

Real Property Law: Purchase & Sale: Remedies: Specific Performance

Summary judgment for the purchaser in an action for specific performance of a contract for the sale of a designated condominium unit was proper; the contract was enforceable through specific performance without regard to any issues relating to the unit's uniqueness. *Pruitt v. Graziano, 215 N.J. Super. 330, 521 A.2d 1313, 1987 N.J. Super. LEXIS 1047 (App.Div. 1987)*.

Tax Law: State & Local Taxes: Personal Property Tax: Exempt Property: General Overview

Twenty units of condominium owned by a hospital and used for the housing of resident and intern physicians and their families could not be taxed as part of a 38-unit complex because under N.J. Stat. Ann. §§ *46:8B-4* and *46:8B-19* each unit was a separate parcel of property, separately assessed and entitled to all exemptions allowed by law. *Perth Amboy General Hospital v. Perth Amboy, 176 N.J. Super. 307, 422 A.2d 1331, 1980 N.J. Super. LEXIS 730 (App.Div. 1980)*, certif. denied, *87 N.J. 352, 434 A.2d 96, 1981 N.J. LEXIS 2214 (N.J. 1981)*.

Tax Law: State & Local Taxes: Real Property Tax: Assessment & Valuation: General Overview

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Phantom condominium units are subject to real estate tax, and to foreclosure if taxes are unpaid; and the association, as distinct from unit-owners, is not entitled to personal notice. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Phantom condominium unit-owners may be liable for common area assessments. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

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N.J. Stat. § 46:8B-5

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§ 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.

History

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

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N.J. Stat. § 46:8B-6

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§ 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.

History

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

Annotations

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Civil Procedure: Pleading & Practice: Defenses, Demurrers & Objections: Failures to State Claims

Civil Procedure: Class Actions: Prerequisites: General Overview

Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability

Civil Rights Law: Contractual Relations & Housing: Fair Housing Rights: Disability Discrimination

Real Property Law: Common Interest Communities: Condominiums: General Overview

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Real Property Law: Common Interest Communities: Homeowners Associations

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Torts: Business Torts: Fraud & Misrepresentation: General Overview

Civil Procedure: Pleading & Practice: Defenses, Demurrers & Objections: Failures to State Claims

In a suit wherein condominium unit owners sought control of the condominium association's governing board, the trial court erred by dismissing the unit owners' complaint for failure to state a cause of action because a majority vote of unit owners was not required to accept control of the association before the court was empowered to implement the transfer of control mandated by the New Jersey Condominium Act, N.J. Stat. Ann. § *46:8B-12.1(a)*, for situations with a dormant developer. *Flinn v. Amboy Nat. Bank, 436 N.J. Super. 274, 93 A.3d 422, 2014 N.J. Super. LEXIS 93 (App.Div. 2014)*.

Civil Procedure: Class Actions: Prerequisites: General Overview

Individual condominium unit owners did not have authority to bring class action suit on behalf of the unit owners against the developer for construction defects, because the Condominium Act, N.J. Stat. Ann. § *46:8B-1* et seq., vested in the condominium association responsibility for matters of common interest to the unit owners under N.J. Stat. Ann. § *46:8B-12*. *Siller v. Hartz Mountain Associates, 184 N.J. Super. 450, 446 A.2d 551, 1981 N.J. Super. LEXIS 826 (Ch.Div. 1981)*, aff'd, *184 N.J. Super. 442, 446 A.2d 547, 1982 N.J. Super. LEXIS 771 (App.Div. 1982)*.

Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability

Superior Court of New Jersey, Appellate Division holds that the term housing-related disputes in the Condominium Act, N.J. Stat. Ann. § *46:8B-14(k)*, refers to any dispute arising directly from the condominium relationship and is to be construed broadly. *Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.)*, certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

Trial court erred by granting a condominium association summary judgment in its suit against two unit owners for unpaid special assessments, because the term housing-related disputes set forth in the Condominium Act, N.J. Stat. Ann. § *46:8B-14(k)*, was construed broadly and referred to any dispute arising from the condominium relationship, including the special assessment disagreement between the parties, therefore, the dispute was subject to arbitration. *Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.)*, certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

Civil Rights Law: Contractual Relations & Housing: Fair Housing Rights: Disability Discrimination

N.J. Stat. Ann. § *46:8B-6*, which governed condominium owners' rights in common areas, could not be read to prohibit a condominium association from accommodating an owner's disability by allowing him to have exclusive use of a parking space near his unit. Reading the statute in such a manner would result in the other unit owners encroaching on the disabled owner's rights under federal law and would specifically violate 42 U.S.C.S. § *3615*. *Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997)*.

Real Property Law: Common Interest Communities: Condominiums: General Overview

Applying rent from a unit to payment of common expenses constituted a common use under N.J. Stat. Ann. § *46:8B-6*; thus, the rental income enhanced the value of the 38 condominium units as their respective common expense payments were reduced. That value enhancement was to be reflected in the individual unit assessments, rather than assessing the rental unit as a separate condominium unit. *Olde Orchard Village Condo Apartments, Inc. v. Pequannock Tp., 21 N.J. Tax 275, 2004 N.J. Tax LEXIS 7 (Tax Ct. Jan. 9, 2004)*.

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N.J. Stat. Ann. § 46:8B-6, which governed condominium owners' rights in common areas, could not be read to prohibit a condominium association from accommodating an owner's disability by allowing him to have exclusive use of a parking space near his unit. Reading the statute in such a manner would result in the other unit owners encroaching on the disabled owner's rights under federal law and would specifically violate 42 U.S.C.S. § 3615. Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997).

Condominium association's rules, which charged nonresident unit owners higher monthly parking fees than resident owners and required new owners to occupy their units at least a year before leasing them, were invalid because the association exceeded its authority under the Condominium Act, N.J. Stat. Ann. § 46:8B-1 et seq. Thanasoulis v. Winston Towers 200 Asso., 110 N.J. 650, 542 A.2d 900, 1988 N.J. LEXIS 65 (N.J. 1988).

Lease agreements in which condominium owners agreed to lease common elements of the condominium complex, including the pool and recreation facilities, from seller were invalid because they were obtained by fraud; however, those owners who were represented by counsel could not recover on the fraud theory because they could not allege the essential element of reliance. Berman v. Gurwicz, 189 N.J. Super. 89, 458 A.2d 1311, 1981 N.J. Super. LEXIS 863 (Ch.Div. 1981), aff'd, 189 N.J. Super. 49, 458 A.2d 1289, 1983 N.J. Super. LEXIS 810 (App.Div. 1983).

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

In a suit wherein condominium unit owners sought control of the condominium association's governing board, the trial court erred by dismissing the unit owners' complaint for failure to state a cause of action because a majority vote of unit owners was not required to accept control of the association before the court was empowered to implement the transfer of control mandated by the New Jersey Condominium Act, N.J. Stat. Ann. § 46:8B-12.1(a), for situations with a dormant developer. Flinn v. Amboy Nat. Bank, 436 N.J. Super. 274, 93 A.3d 422, 2014 N.J. Super. LEXIS 93 (App.Div. 2014).

Superior Court of New Jersey, Appellate Division holds that the term housing-related disputes in the Condominium Act, N.J. Stat. Ann. § 46:8B-14(k), refers to any dispute arising directly from the condominium relationship and is to be construed broadly. Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.), certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

Trial court erred by granting a condominium association summary judgment in its suit against two unit owners for unpaid special assessments, because the term housing-related disputes set forth in the Condominium Act, N.J. Stat. Ann. § 46:8B-14(k), was construed broadly and referred to any dispute arising from the condominium relationship, including the special assessment disagreement between the parties, therefore, the dispute was subject to arbitration. Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.), certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

Real Property Law: Common Interest Communities: Homeowners Associations

Individual condominium unit owners did not have authority to bring class action suit on behalf of the unit owners against the developer for construction defects, because the Condominium Act, N.J. Stat. Ann. § 46:8B-1 et seq., vested in the condominium association responsibility for matters of common interest to the unit owners under N.J. Stat. Ann. § 46:8B-12. Siller v. Hartz Mountain Associates, 184 N.J. Super. 450, 446 A.2d 551, 1981 N.J. Super. LEXIS 826 (Ch.Div. 1981), aff'd, 184 N.J. Super. 442, 446 A.2d 547, 1982 N.J. Super. LEXIS 771 (App.Div. 1982).

Torts: Business Torts: Fraud & Misrepresentation: General Overview

Lease agreements in which condominium owners agreed to lease common elements of the condominium complex, including the pool and recreation facilities, from seller were invalid because they were obtained by fraud; however,

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those owners who were represented by counsel could not recover on the fraud theory because they could not allege the essential element of reliance. *Berman v. Gurwicz, 189 N.J. Super. 89, 458 A.2d 1311, 1981 N.J. Super. LEXIS 863 (Ch.Div. 1981)*, aff'd, *189 N.J. Super. 49, 458 A.2d 1289, 1983 N.J. Super. LEXIS 810 (App.Div. 1983)*.

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N.J. Stat. § 46:8B-7

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§ 46:8B-7. Invalidity of contrary agreements

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

History

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

Annotations

LexisNexis® Notes

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Real Property Law: Common Interest Communities: Condominiums: Termination

Real Property Law: Financing: Mortgages & Other Security Instruments: Foreclosures: General Overview

Real Property Law: Common Interest Communities: Condominiums: Termination

Condominium association was empowered to tax the phantom units, and to foreclose on the tax sale certificate after the taxes were unpaid, but its right to remove the phantom units required the unanimous consent of the unit owners. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Real Property Law: Financing: Mortgages & Other Security Instruments: Foreclosures: General Overview

Condominium association was empowered to tax the phantom units, and to foreclose on the tax sale certificate after the taxes were unpaid, but its right to remove the phantom units required the unanimous consent of the unit owners. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

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N.J. Stat. § 46:8B-8

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

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.

History

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

Annotations

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Real Property Law: Common Interest Communities: Condominiums: Formation

Real Property Law: Common Interest Communities: Condominiums: Leases

Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: General Overview

Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: Summary Eviction

Tax Law: State & Local Taxes: Real Property Tax: General Overview

Real Property Law: Common Interest Communities: Condominiums: General Overview

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Where the owner converted apartments into condominiums and, following administrative approval for registration of the conversion, recorded a master deed creating and establishing the condominiums, each unit constituted a separate parcel of real property; taxes were proper on each unit as a single parcel, even though the owner was not able to sell the units and was still renting them. *Cigolini Associates v. Fairview, 208 N.J. Super. 654, 506 A.2d 811, 1986 N.J. Super. LEXIS 1173 (App.Div. 1986)*.

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § *46:8B-4* and N.J. Stat. Ann. § *46:8B-8*, provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § *45:22A-28*, N.J. Stat. Ann. § *45:22A-29*, and N.J. Stat. Ann. § *45:22A-30*, provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. *Troy, Ltd. v. Renna, 727 F.2d 287, 1984 U.S. App. LEXIS 25937 (3d Cir. N.J. 1984)*.

Real Property Law: Common Interest Communities: Condominiums: Formation

Landlord who sought to evict a tenant of an apartment, which was originally constructed as an intended condominium unit, through a summary dispossess action and to convey the condominium unit under a contract of sale to a third party failed to comply with the requirements of the Anti-Eviction Act, *N.J.S.A. 2A:18-61.1* et seq., by failing to provide written notice in the form required by *N.J.S.A. 2A:18-61.9*; by failing to demonstrate that the condominium would be sold to an owner-occupant; and by failing to present evidence that the apartment building was a condominium or evidence of when the master deed was filed. *Vander Sterre Bros. Constr. v. Keating, 284 N.J. Super. 433, 665 A.2d 779, 1995 N.J. Super. LEXIS 497 (App.Div. 1995)*.

Real Property Law: Common Interest Communities: Condominiums: Leases

Landlord who sought to evict a tenant of an apartment, which was originally constructed as an intended condominium unit, through a summary dispossess action and to convey the condominium unit under a contract of sale to a third party failed to comply with the requirements of the Anti-Eviction Act, *N.J.S.A. 2A:18-61.1* et seq., by failing to provide written notice in the form required by *N.J.S.A. 2A:18-61.9*; by failing to demonstrate that the condominium would be sold to an owner-occupant; and by failing to present evidence that the apartment building was a condominium or evidence of when the master deed was filed. *Vander Sterre Bros. Constr. v. Keating, 284 N.J. Super. 433, 665 A.2d 779, 1995 N.J. Super. LEXIS 497 (App.Div. 1995)*.

Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: General Overview

In addition to the New Jersey Anti-Eviction Act, N.J. Stat. Ann. § *46:8B-4* and N.J. Stat. Ann. § *46:8B-8*, provisions of the New Jersey Condominium Act, and N.J. Stat. Ann. § *45:22A-28*, N.J. Stat. Ann. § *45:22A-29*, and N.J. Stat. Ann. § *45:22A-30*, provisions of the Planned Real Estate Development Full Disclosure Act, governed the conversion of real property to the condominium form of ownership. *Troy, Ltd. v. Renna, 727 F.2d 287, 1984 U.S. App. LEXIS 25937 (3d Cir. N.J. 1984)*.

Real Property Law: Landlord & Tenant: Landlord's Remedies & Rights: Eviction Actions: Summary Eviction

Landlord who sought to evict a tenant of an apartment, which was originally constructed as an intended condominium unit, through a summary dispossess action and to convey the condominium unit under a contract of sale to a third party failed to comply with the requirements of the Anti-Eviction Act, *N.J.S.A. 2A:18-61.1* et seq., by failing to provide written notice in the form required by *N.J.S.A. 2A:18-61.9*; by failing to demonstrate that the condominium would be sold to an owner-occupant; and by failing to present evidence that the apartment building was a condominium or evidence of when the master deed was filed. *Vander Sterre Bros. Constr. v. Keating, 284 N.J. Super. 433, 665 A.2d 779, 1995 N.J. Super. LEXIS 497 (App.Div. 1995)*.

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Tax Law: State & Local Taxes: Real Property Tax: General Overview

Where the owner converted apartments into condominiums and, following administrative approval for registration of the conversion, recorded a master deed creating and establishing the condominiums, each unit constituted a separate parcel of real property; taxes were proper on each unit as a single parcel, even though the owner was not able to sell the units and was still renting them. *Cigolini Associates v. Fairview, 208 N.J. Super. 654, 506 A.2d 811, 1986 N.J. Super. LEXIS 1173 (App.Div. 1986)*.

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N.J. Stat. § 46:8B-8.1

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§ 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.

History

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

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N.J. Stat. § 46:8B-9

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§ 46:8B-9. Master deed, contents.

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.

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History

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

Annotations

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Real Property Law: Common Interest Communities: Condominiums: General Overview

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Real Property Law: Zoning & Land Use: Ordinances

Real Property Law: Common Interest Communities: Condominiums: General Overview

Where restrictions precluding certain uses of commercial units of a high-rise condominium was not included in the master deed by developer, condominium owner lacked standing to enforce deed restrictions because the master deed did not meet the requirements of N.J. Stat. Ann. § *46:8B-9*, which required inclusions of all use restrictions, as it was the defining document with respect to the rights and obligations of unit owners. *Amir v. D'Agostino, 328 N.J. Super. 141, 744 A.2d 1233, 1998 N.J. Super. LEXIS 577 (Ch.Div. 1998)*, aff'd, *328 N.J. Super. 103, 744 A.2d 1212, 2000 N.J. Super. LEXIS 38 (App.Div. 2000)*.

Condominium unit owner's rights were both protected and limited by the master deed and the by-laws incorporated in it under the Condominium Act, N.J. Stat. Ann. § *46:8B-1* et seq., specifically N.J. Stat. Ann. § *46:8B-3(m)* and 9(i); as such, the by-laws specified the procedure to be followed for obtaining permission to make a structural change in a unit and were reasonable and not arbitrary. *Courts at Beachgate v. Bird, 226 N.J. Super. 631, 545 A.2d 243, 1988 N.J. Super. LEXIS 272 (Ch.Div. 1988)*.

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Harmonization of the Municipal Land Use Law (MLUL), N.J. Stat. Ann. §§ *40:55D-1* — *40:55D-163*, with the Condominium Act, N.J. Stat. Ann. §§ *46:8B-1* to *46:8B-38*, invests a condominium association, not individual condominium unit owners, with the right to participate in a zoning protest petition pursuant to the MLUL, N.J. Stat. Ann. § *40:55D-63*. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

Trial court properly determined that a condominium association, not individual condominium unit owners, had the right to participate in a zoning protest petition pursuant to the Municipal Land Use Law (MLUL), N.J. Stat. Ann. § *40:55D-63*, but the amended zoning ordinance was declared invalid for the planning board's failure to follow the MLUL, N.J. Stat. Ann. § *40:55D-26(a)*, particularly because the borough failed to review the report of the planning board, which required, at minimum, an acknowledgment on the record that the report was reviewed. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

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Real Property Law: Zoning & Land Use: Ordinances

Harmonization of the Municipal Land Use Law (MLUL), N.J. Stat. Ann. §§ *40:55D-1* — *40:55D-163*, with the Condominium Act, N.J. Stat. Ann. §§ *46:8B-1* to *46:8B-38*, invests a condominium association, not individual condominium unit owners, with the right to participate in a zoning protest petition pursuant to the MLUL, N.J. Stat. Ann. § *40:55D-63*. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

Trial court properly determined that a condominium association, not individual condominium unit owners, had the right to participate in a zoning protest petition pursuant to the Municipal Land Use Law (MLUL), N.J. Stat. Ann. § *40:55D-63*, but the amended zoning ordinance was declared invalid for the planning board's failure to follow the MLUL, N.J. Stat. Ann. § *40:55D-26(a)*, particularly because the borough failed to review the report of the planning board, which required, at minimum, an acknowledgment on the record that the report was reviewed. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

Research References & Practice Aids

Cross References:

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

PRACTICE GUIDES & TREATISES:

New Jersey Transaction Guide § *130.20* et seq. Creation of Condominiums

New Jersey Transaction Guide § *130.30* et seq. Administration of Condominiums

PRACTICE FORMS:

7-130 New Jersey Transaction Guide § *130.200*, Master Deed

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N.J. Stat. § 46:8B-10

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

LexisNexis® New Jersey Annotated Statutes > Title 46. Property (Subts. 1 — 6) > Subtitle 2. Real Property Only (Chs. 3 — 11) > Chapter 8B. Condominiums (Arts. I — VIII) > Article III. Creation of Condominium (§§ 46:8B-8 — 46:8B-11)

§ 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.

History

L. 1969, c. 257, § 10, eff. Jan. 7, 1970.

Annotations

LexisNexis® Notes

Case Notes

Insurance Law: Claims & Contracts: Subrogation: Contractual Subrogation

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Insurance Law: Claims & Contracts: Subrogation: Contractual Subrogation

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Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since the association's by-laws compelled a waiver of such claims. *Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018)*.

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since the association's by-laws compelled a waiver of such claims. *Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018)*.

Research References & Practice Aids

PRACTICE GUIDES & TREATISES:

New Jersey Transaction Guide § *130.20* et seq. Creation of Condominiums

PRACTICE FORMS:

7-130 New Jersey Transaction Guide § *130.242*, Unit Deed

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N.J. Stat. § 46:8B-11

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LexisNexis® New Jersey Annotated Statutes > Title 46. Property (Subts. 1 — 6) > Subtitle 2. Real Property Only (Chs. 3 — 11) > Chapter 8B. Condominiums (Arts. I — VIII) > Article III. Creation of Condominium (§§ 46:8B-8 — 46:8B-11)

§ 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.

History

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

Annotations

Research References & Practice Aids

PRACTICE GUIDES & TREATISES:

New Jersey Transaction Guide § *130.20* et seq. Creation of Condominiums

New Jersey Transaction Guide § *130.40* et seq. Tenant Notification

PRACTICE FORMS:

7-130 New Jersey Transaction Guide § *130.243*, Unit Deed Provisions Authorizing Amendments by Grantor

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N.J. Stat. § 46:8B-12

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§ 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.

History

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

Annotations

LexisNexis® Notes

Case Notes

Civil Procedure: Justiciability: Standing: Third Party Standing

Civil Procedure: Summary Judgment: Burdens of Production & Proof: Nonmovants

Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability

Insurance Law: Claims & Contracts: Subrogation: Contractual Subrogation

Real Property Law: Common Interest Communities: Condominiums: General Overview

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Real Property Law: Construction Law: Defects

Real Property Law: Financing: Mortgages & Other Security Instruments: Mortgagee's Interests

Real Property Law: Zoning & Land Use: Ordinances

Torts: Negligence: Proof: Res Ipsa Loquitur: Elements: Type of Event

Official version to be obtained from Lexis Nexis, www.lexis.com

Torts: Premises Liability & Property: General Premises Liability: Dangerous Conditions: Duty to Maintain

Civil Procedure: Justiciability: Standing: Third Party Standing

In a massive construction lawsuit, a trial court erred by holding that the condominium association lacked standing to file the suit because it was legally responsible for the upkeep of the common areas and was authorized by statute to sue for damage to those areas; further, the unit owners' post-filing ratification approving the litigation on their behalf was proper. *Port Liberte II Condominium Ass'n, Inc. v. New Liberty Residential Urban Renewal Co., LLC, 435 N.J. Super. 51, 86 A.3d 730, 2014 N.J. Super. LEXIS 19 (App.Div. 2014)*.

Civil Procedure: Summary Judgment: Burdens of Production & Proof: Nonmovants

Where plaintiff sued defendant condominium association and others over injuries she sustained when a condominium building's elevator doors closed on her, the trial court erred in granting defendants summary judgment on the grounds plaintiff failed to make out a prima facie case of negligence; under the dictates of *Jerista v. Murray, 883 A.2d 350 (N.J. 2005)*, the res ipsa inference of negligence was applicable because common experience instructed that elevator doors ordinarily should not strike a person entering or exiting an elevator in the absence of negligence, and to warrant the inference, plaintiff had no obligation to exclude other possible causes that might explain the malfunctioning of the elevator doors or to show that defendants were on notice of some defect in the doors’ operation. *2018 N.J. LEXIS 922*.

Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability

Superior Court of New Jersey, Appellate Division holds that the term housing-related disputes in the Condominium Act, N.J. Stat. Ann. § *46:8B-14(k)*, refers to any dispute arising directly from the condominium relationship and is to be construed broadly. *Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.)*, certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

Trial court erred by granting a condominium association summary judgment in its suit against two unit owners for unpaid special assessments, because the term housing-related disputes set forth in the Condominium Act, N.J. Stat. Ann. § *46:8B-14(k)*, was construed broadly and referred to any dispute arising from the condominium relationship, including the special assessment disagreement between the parties, therefore, the dispute was subject to arbitration. *Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.)*, certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

Insurance Law: Claims & Contracts: Subrogation: Contractual Subrogation

Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since the association's by-laws compelled a waiver of such claims. *Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018)*.

Real Property Law: Common Interest Communities: Condominiums: General Overview

Condominiums are administered and managed by an association which may be any entity recognized by the laws of New Jersey, including but not limited to a business corporation or nonprofit corporation pursuant to N.J. Stat.

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Ann. § 46:8B-12. Papalexiou v. Tower West Condominium, 167 N.J. Super. 516, 401 A.2d 280, 1979 N.J. Super. LEXIS 718 (Ch.Div. 1979).

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since the association's by-laws compelled a waiver of such claims. Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018).

In a premises liability case, the court reversed the directed verdict granted to the association and dismissing the residents' negligence claim because the association had a statutory duty to maintain the common areas, including a duty to identify and correct dangerous conditions and that duty extended to residents of the condominium building, regardless of their characterization as licensees or invitees. Lechler v. 303 Sunset Ave. Condo. Ass'n, 452 N.J. Super. 574, 178 A.3d 711, 2017 N.J. Super. LEXIS 175 (App.Div. 2017).

In a massive construction lawsuit, a trial court erred by holding that the condominium association lacked standing to file the suit because it was legally responsible for the upkeep of the common areas and was authorized by statute to sue for damage to those areas; further, the unit owners' post-filing ratification approving the litigation on their behalf was proper. Port Liberte II Condominium Ass'n, Inc. v. New Liberty Residential Urban Renewal Co., LLC, 435 N.J. Super. 51, 86 A.3d 730, 2014 N.J. Super. LEXIS 19 (App.Div. 2014).

Condominium association had standing to pursue Consumer Fraud Act claims for construction defects resulting in water damage; however, the association lacked standing to sue for damages to the unit windows because they were not common elements pursuant to N.J. Stat. Ann. § 46:8B-3. Belmont Condominium Ass'n, Inc. v. Geibel, 432 N.J. Super. 52, 74 A.3d 10, 2013 N.J. Super. LEXIS 105 (App.Div.), certif. denied, *216 N.J. 366, 80 A.3d 747, 2013 N.J. LEXIS 1280 (N.J. 2013)*.

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Harmonization of the Municipal Land Use Law (MLUL), N.J. Stat. Ann. §§ 40:55D-1 — 40:55D-163, with the Condominium Act, N.J. Stat. Ann. §§ 46:8B-1 to 46:8B-38, invests a condominium association, not individual condominium unit owners, with the right to participate in a zoning protest petition pursuant to the MLUL, N.J. Stat. Ann. § 40:55D-63. Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011).

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MLUL, N.J. Stat. Ann. § 40:55D-26(a), particularly because the borough failed to review the report of the planning board, which required, at minimum, an acknowledgment on the record that the report was reviewed. Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011).

Under N.J. Stat. Ann. § 46:8B-3(e), a mortgagee in possession was liable for delinquent condominium charges, which had accrued against the property's legal owner, for services and utilities furnished during the mortgagee's possession and control of the premises, even though he was not the legal owner of the condominium units. Woodview Condominium Ass'n, Inc. v. Shanahan, 391 N.J. Super. 170, 917 A.2d 790, 2007 N.J. Super. LEXIS 53 (App.Div. 2007).

Real Property Law: Construction Law: Defects

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Real Property Law: Financing: Mortgages & Other Security Instruments: Mortgagee's Interests

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Real Property Law: Zoning & Land Use: Ordinances

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Torts: Negligence: Proof: Res Ipsa Loquitur: Elements: Type of Event

Where plaintiff sued defendant condominium association and others over injuries she sustained when a condominium building's elevator doors closed on her, the trial court erred in granting defendants summary judgment on the grounds plaintiff failed to make out a prima facie case of negligence; under the dictates of *Jerista v. Murray, 883 A.2d 350 (N.J. 2005)*, the res ipsa inference of negligence was applicable because common experience instructed that elevator doors ordinarily should not strike a person entering or exiting an elevator in the absence of negligence, and to warrant the inference, plaintiff had no obligation to exclude other possible causes that might

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Torts: Premises Liability & Property: General Premises Liability: Dangerous Conditions: Duty to Maintain

In a premises liability case, the court reversed the directed verdict granted to the association and dismissing the residents' negligence claim because the association had a statutory duty to maintain the common areas, including a duty to identify and correct dangerous conditions and that duty extended to residents of the condominium building, regardless of their characterization as licensees or invitees. *Lechler v. 303 Sunset Ave. Condo. Ass'n, 452 N.J. Super. 574, 178 A.3d 711, 2017 N.J. Super. LEXIS 175 (App.Div. 2017)*.

Research References & Practice Aids

LAW REVIEWS & JOURNALS:

29 Rutgers L.J. 947, ARTICLE: FREE SPEECH, PRIVATE SPACE, AND THE CONSTITUTION.

PRACTICE GUIDES & TREATISES:

New Jersey Transaction Guide § *130.20* et seq. Creation of Condominiums

New Jersey Transaction Guide § *130.30* et seq. Administration of Condominiums

PRACTICE FORMS:

7-130 New Jersey Transaction Guide § *130.202*, Rules and Regulations of the Condominium Association

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N.J. Stat. § 46:8B-12.1

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

LexisNexis® New Jersey Annotated Statutes > Title 46. Property (Subts. 1 — 6) > Subtitle 2. Real Property Only (Chs. 3 — 11) > Chapter 8B. Condominiums (Arts. I — VIII) > Article IV. Condominium Association (§§ 46:8B-12 — 46:8B-18)

§ 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.

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(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.

History

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

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Annotations

LexisNexis® Notes

Case Notes

Civil Procedure: Justiciability: Standing: Third Party Standing

Civil Procedure: Pleading & Practice: Defenses, Demurrers & Objections: Failures to State Claims

Civil Procedure: Parties: Capacity of Parties: General Overview

Civil Rights Law: Contractual Relations & Housing: Fair Housing Rights: Disability Discrimination

Insurance Law: General Liability Insurance: Coverage: Products & Workmanship

Real Property Law: Common Interest Communities: Condominiums: General Overview

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Real Property Law: Common Interest Communities: Condominiums: Management

Real Property Law: Zoning & Land Use: Ordinances

Civil Procedure: Justiciability: Standing: Third Party Standing

In a massive construction lawsuit, a trial court erred by holding that the condominium association lacked standing to file the suit because it was legally responsible for the upkeep of the common areas and was authorized by statute to sue for damage to those areas; further, the unit owners' post-filing ratification approving the litigation on their behalf was proper. *Port Liberte II Condominium Ass'n, Inc. v. New Liberty Residential Urban Renewal Co., LLC, 435 N.J. Super. 51, 86 A.3d 730, 2014 N.J. Super. LEXIS 19 (App.Div. 2014)*.

Condominium association has standing to assert claims for common law fraud and consumer fraud against third-party contractors and materialmen for defects in the construction of the common elements, regardless of whether the association formally existed when the developer contracted with the third-parties; pursuant to the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. § *45:22A-26*, any subcontractor or materialman entering into a contract or supplying a product for use in the construction of the common elements of a condominium association after the developer registers the condominium, is on constructive notice that representations made to, and omissions withheld from, the developer will be deemed as if they were made to, or withheld from, the association, once the association assumes control of the condominium. *Port Liberte Homeowners Ass'n v. Sordoni Const. Co., 393 N.J. Super. 492, 924 A.2d 592, 2007 N.J. Super. LEXIS 168 (App.Div.)*, certif. denied, *192 N.J. 479, 932 A.2d 30, 2007 N.J. LEXIS 1216 (N.J. 2007)*.

Civil Procedure: Pleading & Practice: Defenses, Demurrers & Objections: Failures to State Claims

In a suit wherein condominium unit owners sought control of the condominium association's governing board, the trial court erred by dismissing the unit owners' complaint for failure to state a cause of action because a majority vote of unit owners was not required to accept control of the association before the court was empowered to

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implement the transfer of control mandated by the New Jersey Condominium Act, N.J. Stat. Ann. § 46:8B-12.1(a), for situations with a dormant developer. Flinn v. Amboy Nat. Bank, 436 N.J. Super. 274, 93 A.3d 422, 2014 N.J. Super. LEXIS 93 (App.Div. 2014).

Civil Procedure: Parties: Capacity of Parties: General Overview

Clear import of N.J. Stat. Ann. § 46:8B-15(a), N.J. Stat. Ann. § 46:8B-14(c), and N.J. Stat. Ann. § 46:8B-12.1 is that a condominium association may be sued for its failure to administer or manage the common elements in a lawful manner and for its acts in enforcing discriminatory provisions of the master deed or bylaws. Accordingly, when a handicapped tenant brought suit to enforce his federal rights, the association was a proper defendant. Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997).

Civil Rights Law: Contractual Relations & Housing: Fair Housing Rights: Disability Discrimination

Clear import of N.J. Stat. Ann. § 46:8B-15(a), N.J. Stat. Ann. § 46:8B-14(c), and N.J. Stat. Ann. § 46:8B-12.1 is that a condominium association may be sued for its failure to administer or manage the common elements in a lawful manner and for its acts in enforcing discriminatory provisions of the master deed or bylaws. Accordingly, when a handicapped tenant brought suit to enforce his federal rights, the association was a proper defendant. Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997).

Insurance Law: General Liability Insurance: Coverage: Products & Workmanship

In a suit involving a condominium development, the consequential damages caused by the subcontractors' faulty workmanship constituted property damage and the event resulting in that damage, water from rain flowing into the interior of the property due to the subcontractors' faulty workmanship, was an occurrence under the plain language of the commercial general liability policies at issue in the case. Cypress Point Condo. Ass'n v. Adria Towers, L.L.C., 226 N.J. 403, 143 A.3d 273, 2016 N.J. LEXIS 847 (N.J. 2016).

Real Property Law: Common Interest Communities: Condominiums: General Overview

In an action brought by a condominium association to recover from the developer its share of the replacement reserve component of the common expenses for the period the developer acted as the association, the developer was not relieved of its responsibility to pay replacement reserves by N.J. Stat. Ann. § 46:8B-12.1(c); repair and replacement related to common elements already in existence and not capital improvements. Ocean Club Condo. Ass'n v. Gardner, 318 N.J. Super. 237, 723 A.2d 623, 1998 N.J. Super. LEXIS 504 (App.Div. 1998).

Clear import of N.J. Stat. Ann. § 46:8B-15(a), N.J. Stat. Ann. § 46:8B-14(c), and N.J. Stat. Ann. § 46:8B-12.1 is that a condominium association may be sued for its failure to administer or manage the common elements in a lawful manner and for its acts in enforcing discriminatory provisions of the master deed or bylaws. Accordingly, when a handicapped tenant brought suit to enforce his federal rights, the association was a proper defendant. Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997).

Pursuant to N.J. Stat. Ann. § 46:8B-12.1(a), where 75 percent or more of the units of a condominium development had been sold, the developer was not entitled to elect more than one member to the association's board of trustees because the purpose of § 46:8B-12.1(a) was to shift control from the developer to the unit purchasers. Hill v. Cole, 248 N.J. Super. 677, 591 A.2d 1036, 1991 N.J. Super. LEXIS 200 (App.Div. 1991).

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

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In a suit involving a condominium development, the consequential damages caused by the subcontractors' faulty workmanship constituted property damage and the event resulting in that damage, water from rain flowing into the interior of the property due to the subcontractors' faulty workmanship, was an occurrence under the plain language of the commercial general liability policies at issue in the case. *Cypress Point Condo. Ass'n v. Adria Towers, L.L.C., 226 N.J. 403, 143 A.3d 273, 2016 N.J. LEXIS 847 (N.J. 2016)*.

In a suit wherein condominium unit owners sought control of the condominium association's governing board, the trial court erred by dismissing the unit owners' complaint for failure to state a cause of action because a majority vote of unit owners was not required to accept control of the association before the court was empowered to implement the transfer of control mandated by the New Jersey Condominium Act, N.J. Stat. Ann. § *46:8B-12.1(a)*, for situations with a dormant developer. *Flinn v. Amboy Nat. Bank, 436 N.J. Super. 274, 93 A.3d 422, 2014 N.J. Super. LEXIS 93 (App.Div. 2014)*.

In a massive construction lawsuit, a trial court erred by holding that the condominium association lacked standing to file the suit because it was legally responsible for the upkeep of the common areas and was authorized by statute to sue for damage to those areas; further, the unit owners' post-filing ratification approving the litigation on their behalf was proper. *Port Liberte II Condominium Ass'n, Inc. v. New Liberty Residential Urban Renewal Co., LLC, 435 N.J. Super. 51, 86 A.3d 730, 2014 N.J. Super. LEXIS 19 (App.Div. 2014)*.

Although no formal transition of authority was accomplished, a transition of control of the common elements of a condominium from bankruptcy debtors which developed the condominium to the condominium association was effected upon the sale of the final unit which was owned by the debtors, and the debtors no longer had any interest in the condominium. *One Hudson Park Condo. Ass'n v. Tarragon Corp. (In re Tarragon Corp.), 2012 Bankr. LEXIS 1080 (Bankr. D.N.J. Mar. 13, 2012)*.

Harmonization of the Municipal Land Use Law (MLUL), N.J. Stat. Ann. §§ *40:55D-1* — *40:55D-163*, with the Condominium Act, N.J. Stat. Ann. §§ *46:8B-1* to *46:8B-38*, invests a condominium association, not individual condominium unit owners, with the right to participate in a zoning protest petition pursuant to the MLUL, N.J. Stat. Ann. § *40:55D-63*. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

Trial court properly determined that a condominium association, not individual condominium unit owners, had the right to participate in a zoning protest petition pursuant to the Municipal Land Use Law (MLUL), N.J. Stat. Ann. § *40:55D-63*, but the amended zoning ordinance was declared invalid for the planning board's failure to follow the MLUL, N.J. Stat. Ann. § *40:55D-26(a)*, particularly because the borough failed to review the report of the planning board, which required, at minimum, an acknowledgment on the record that the report was reviewed. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

Condominium association has standing to assert claims for common law fraud and consumer fraud against third-party contractors and materialmen for defects in the construction of the common elements, regardless of whether the association formally existed when the developer contracted with the third-parties; pursuant to the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. § *45:22A-26*, any subcontractor or materialman entering into a contract or supplying a product for use in the construction of the common elements of a condominium association after the developer registers the condominium, is on constructive notice that representations made to, and omissions withheld from, the developer will be deemed as if they were made to, or withheld from, the association, once the association assumes control of the condominium. *Port Liberte Homeowners Ass'n v. Sordoni Const. Co., 393 N.J. Super. 492, 924 A.2d 592, 2007 N.J. Super. LEXIS 168 (App.Div.)*, certif. denied, *192 N.J. 479, 932 A.2d 30, 2007 N.J. LEXIS 1216 (N.J. 2007)*.

Real Property Law: Common Interest Communities: Condominiums: Management

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Although no formal transition of authority was accomplished, a transition of control of the common elements of a condominium from bankruptcy debtors which developed the condominium to the condominium association was effected upon the sale of the final unit which was owned by the debtors, and the debtors no longer had any interest in the condominium. *One Hudson Park Condo. Ass'n v. Tarragon Corp. (In re Tarragon Corp.), 2012 Bankr. LEXIS 1080 (Bankr. D.N.J. Mar. 13, 2012)*.

Real Property Law: Zoning & Land Use: Ordinances

Harmonization of the Municipal Land Use Law (MLUL), N.J. Stat. Ann. §§ *40:55D-1* — *40:55D-163*, with the Condominium Act, N.J. Stat. Ann. §§ *46:8B-1* to *46:8B-38*, invests a condominium association, not individual condominium unit owners, with the right to participate in a zoning protest petition pursuant to the MLUL, N.J. Stat. Ann. § *40:55D-63*. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

Trial court properly determined that a condominium association, not individual condominium unit owners, had the right to participate in a zoning protest petition pursuant to the Municipal Land Use Law (MLUL), N.J. Stat. Ann. § *40:55D-63*, but the amended zoning ordinance was declared invalid for the planning board's failure to follow the MLUL, N.J. Stat. Ann. § *40:55D-26(a)*, particularly because the borough failed to review the report of the planning board, which required, at minimum, an acknowledgment on the record that the report was reviewed. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

Research References & Practice Aids

Cross References:

Definitions, see *2A:62A-12*.

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N.J. Stat. § 46:8B-12.2

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

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§ 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.

History

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

Annotations

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Civil Procedure: Pleading & Practice: Defenses, Demurrers & Objections: Failures to State Claims

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Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Civil Procedure: Pleading & Practice: Defenses, Demurrers & Objections: Failures to State Claims

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In a suit wherein condominium unit owners sought control of the condominium association's governing board, the trial court erred by dismissing the unit owners' complaint for failure to state a cause of action because a majority vote of unit owners was not required to accept control of the association before the court was empowered to implement the transfer of control mandated by the New Jersey Condominium Act, N.J. Stat. Ann. § *46:8B-12.1(a)*, for situations with a dormant developer. *Flinn v. Amboy Nat. Bank, 436 N.J. Super. 274, 93 A.3d 422, 2014 N.J. Super. LEXIS 93 (App.Div. 2014)*.

Real Property Law: Common Interest Communities: Condominiums: General Overview

Trial court properly found that agreement signed by the developer of a housing and condominium project bound a condominium owners' association for an excessive period, thereby denying them control over their own condominium board; because the agreement violated the legislative intent of the New Jersey Condominium Act, N.J. Stat. Ann. §§ *46:8B-1* to *46:8B-38*, it was void. *Brandon Farms Prop. Owners Ass'n v. Brandon Farms Condo. Ass'n, 180 N.J. 361, 852 A.2d 132, 2004 N.J. LEXIS 911 (N.J. 2004)*.

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

In a suit wherein condominium unit owners sought control of the condominium association's governing board, the trial court erred by dismissing the unit owners' complaint for failure to state a cause of action because a majority vote of unit owners was not required to accept control of the association before the court was empowered to implement the transfer of control mandated by the New Jersey Condominium Act, N.J. Stat. Ann. § *46:8B-12.1(a)*, for situations with a dormant developer. *Flinn v. Amboy Nat. Bank, 436 N.J. Super. 274, 93 A.3d 422, 2014 N.J. Super. LEXIS 93 (App.Div. 2014)*.

Research References & Practice Aids

PRACTICE GUIDES & TREATISES:

New Jersey Transaction Guide § *133.20* et seq. Property Management Defined

PRACTICE FORMS:

7-133 New Jersey Transaction Guide § *133.213*, Condominium Management Agreement

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N.J. Stat. § 46:8B-13

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

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§ 46:8B-13. Bylaws

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.

History

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

Annotations

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Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability

Real Property Law: Common Interest Communities: Condominiums: General Overview

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Real Property Law: Common Interest Communities: Homeowners Associations

Real Property Law: Zoning & Land Use: Ordinances

Torts: Premises Liability & Property: General Premises Liability: Dangerous Conditions: Duty to Maintain

Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability

Superior Court of New Jersey, Appellate Division holds that the term housing-related disputes in the Condominium Act, N.J. Stat. Ann. § *46:8B-14(k)*, refers to any dispute arising directly from the condominium relationship and is to be construed broadly. *Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.)*, certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

Trial court erred by granting a condominium association summary judgment in its suit against two unit owners for unpaid special assessments, because the term housing-related disputes set forth in the Condominium Act, N.J. Stat. Ann. § *46:8B-14(k)*, was construed broadly and referred to any dispute arising from the condominium relationship, including the special assessment disagreement between the parties, therefore, the dispute was subject to arbitration. *Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.)*, certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

Real Property Law: Common Interest Communities: Condominiums: General Overview

Applicable section of a master deed declaration required a condominium association, not the unit owners, to be responsible for collection and payment of all assessments made by the master property owners association; however, the condominium association never agreed to be responsible for collection and payment of the assessments, and the developer created the so-called agreement before the condominium association came into existence, and thus, the agreement was void and unenforceable. *Brandon Farms Prop. Owners Ass'n v. Brandon Farms Condo. Ass'n, 180 N.J. 361, 852 A.2d 132, 2004 N.J. LEXIS 911 (N.J. 2004)*.

Where members of a condominium association sought to amend condominium by-laws to delete a developer's right of first refusal to buy a condominium unit upon resale, the members had the right, power and authority to do so; the members complied with the requirements contained in the by-laws when they passed the amendment. *Seashore*

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Club of Atlantic City v. Seashore Club Condominium Asso., 180 N.J. Super. 81, 433 A.2d 819, 1981 N.J. Super. LEXIS 641 (Ch.Div. 1981).

Condominium Association's power is derived from the by-laws, which are to be recorded with the master deed under N.J. Stat. Ann. § 46:8B-13, and the association is entrusted with the assessment and collection of funds for common expenses and the payment thereof under N.J. Stat. Ann. § 46:8B-17. Papalexiou v. Tower West Condominium, 167 N.J. Super. 516, 401 A.2d 280, 1979 N.J. Super. LEXIS 718 (Ch.Div. 1979).

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

In a premises liability case, the court reversed the directed verdict granted to the association and dismissing the residents' negligence claim because the association had a statutory duty to maintain the common areas, including a duty to identify and correct dangerous conditions and that duty extended to residents of the condominium building, regardless of their characterization as licensees or invitees. Lechler v. 303 Sunset Ave. Condo. Ass'n, 452 N.J. Super. 574, 178 A.3d 711, 2017 N.J. Super. LEXIS 175 (App.Div. 2017).

Superior Court of New Jersey, Appellate Division holds that the term housing-related disputes in the Condominium Act, N.J. Stat. Ann. § 46:8B-14(k), refers to any dispute arising directly from the condominium relationship and is to be construed broadly. Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.), certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

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Harmonization of the Municipal Land Use Law (MLUL), N.J. Stat. Ann. §§ 40:55D-1 — 40:55D-163, with the Condominium Act, N.J. Stat. Ann. §§ 46:8B-1 to 46:8B-38, invests a condominium association, not individual condominium unit owners, with the right to participate in a zoning protest petition pursuant to the MLUL, N.J. Stat. Ann. § 40:55D-63. Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011).

Trial court properly determined that a condominium association, not individual condominium unit owners, had the right to participate in a zoning protest petition pursuant to the Municipal Land Use Law (MLUL), N.J. Stat. Ann. § 40:55D-63, but the amended zoning ordinance was declared invalid for the planning board's failure to follow the MLUL, N.J. Stat. Ann. § 40:55D-26(a), particularly because the borough failed to review the report of the planning board, which required, at minimum, an acknowledgment on the record that the report was reviewed. Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011).

Real Property Law: Common Interest Communities: Homeowners Associations

Nothing in N.J. Stat. Ann. § 46:8B-13(d) gave the condominium association the power to administer fines or impose liens on the property of the unit owner for violation of the association's rules and regulations, where the unit owner's son drove a truck onto the lawn while helping such owner move from the unit and brought a dog onto the premises during the move; the term "enforcement" in the statute envisioned such association bringing suit to

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recover monies due or for damages and/or injunctive relief or both against an offending unit owner. *Walker v. Briarwood Condo Ass'n, 274 N.J. Super. 422, 644 A.2d 634, 1994 N.J. Super. LEXIS 289 (App.Div. 1994)*.

Real Property Law: Zoning & Land Use: Ordinances

Harmonization of the Municipal Land Use Law (MLUL), N.J. Stat. Ann. §§ *40:55D-1* — *40:55D-163*, with the Condominium Act, N.J. Stat. Ann. §§ *46:8B-1* to *46:8B-38*, invests a condominium association, not individual condominium unit owners, with the right to participate in a zoning protest petition pursuant to the MLUL, N.J. Stat. Ann. § *40:55D-63*. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

Trial court properly determined that a condominium association, not individual condominium unit owners, had the right to participate in a zoning protest petition pursuant to the Municipal Land Use Law (MLUL), N.J. Stat. Ann. § *40:55D-63*, but the amended zoning ordinance was declared invalid for the planning board's failure to follow the MLUL, N.J. Stat. Ann. § *40:55D-26(a)*, particularly because the borough failed to review the report of the planning board, which required, at minimum, an acknowledgment on the record that the report was reviewed. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

Torts: Premises Liability & Property: General Premises Liability: Dangerous Conditions: Duty to Maintain

In a premises liability case, the court reversed the directed verdict granted to the association and dismissing the residents' negligence claim because the association had a statutory duty to maintain the common areas, including a duty to identify and correct dangerous conditions and that duty extended to residents of the condominium building, regardless of their characterization as licensees or invitees. *Lechler v. 303 Sunset Ave. Condo. Ass'n, 452 N.J. Super. 574, 178 A.3d 711, 2017 N.J. Super. LEXIS 175 (App.Div. 2017)*.

Research References & Practice Aids

Administrative Code:

N.J.A.C. 5:20 (2013), CHAPTER MEETINGS OF GOVERNING BOARDS OF ASSOCIATIONS OF CONDOMINIUMS AND OTHER PLANNED REAL ESTATE DEVELOPMENTS, 5, Chapter 20 — Chapter Notes.

PRACTICE GUIDES & TREATISES:

New Jersey Transaction Guide § *130.20* et seq. Creation of Condominiums

New Jersey Transaction Guide § *130.30* et seq. Administration of Condominiums

PRACTICE FORMS:

7-130 New Jersey Transaction Guide § *130.201*, By-laws

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§ 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.

History

L. *1991, c. 48*, § 2.

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N.J. Stat. § 46:8B-14

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

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§ 46:8B-14. Responsibilities of association

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.

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(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.

History

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

Annotations

LexisNexis® Notes

Case Notes

Civil Procedure: Justiciability: Standing: Third Party Standing

Civil Procedure: Parties: Capacity of Parties: General Overview

Civil Procedure: Class Actions: Derivative Actions: General Overview

Civil Procedure: Summary Judgment: Burdens of Production & Proof: Nonmovants

Civil Procedure: Alternative Dispute Resolution: General Overview

Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability

Civil Rights Law: Contractual Relations & Housing: Fair Housing Rights: Disability Discrimination

Insurance Law: Claims & Contracts: Subrogation: General Overview

Insurance Law: Claims & Contracts: Subrogation: Contractual Subrogation

Insurance Law: General Liability Insurance: Coverage: Triggers: General Overview

Real Property Law: Common Interest Communities: Condominiums: General Overview

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Real Property Law: Common Interest Communities: Homeowners Associations

Real Property Law: Zoning & Land Use: Ordinances

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Torts: Negligence: Proof: Res Ipsa Loquitur: Elements: Type of Event

Torts: Premises Liability & Property: General Premises Liability: Dangerous Conditions: Duty to Maintain

Torts: Premises Liability & Property: General Premises Liability: Duties of Care: Duty off Premises: Sidewalks & Streets

Civil Procedure: Justiciability: Standing: Third Party Standing

In a massive construction lawsuit, a trial court erred by holding that the condominium association lacked standing to file the suit because it was legally responsible for the upkeep of the common areas and was authorized by statute to sue for damage to those areas; further, the unit owners' post-filing ratification approving the litigation on their behalf was proper. *Port Liberte II Condominium Ass'n, Inc. v. New Liberty Residential Urban Renewal Co., LLC, 435 N.J. Super. 51, 86 A.3d 730, 2014 N.J. Super. LEXIS 19 (App.Div. 2014)*.

Condominium association has standing to assert claims for common law fraud and consumer fraud against third-party contractors and materialmen for defects in the construction of the common elements, regardless of whether the association formally existed when the developer contracted with the third-parties; pursuant to the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. § *45:22A-26*, any subcontractor or materialman entering into a contract or supplying a product for use in the construction of the common elements of a condominium association after the developer registers the condominium, is on constructive notice that representations made to, and omissions withheld from, the developer will be deemed as if they were made to, or withheld from, the association, once the association assumes control of the condominium. *Port Liberte Homeowners Ass'n v. Sordoni Const. Co., 393 N.J. Super. 492, 924 A.2d 592, 2007 N.J. Super. LEXIS 168 (App.Div.)*, certif. denied, *192 N.J. 479, 932 A.2d 30, 2007 N.J. LEXIS 1216 (N.J. 2007)*.

Civil Procedure: Parties: Capacity of Parties: General Overview

Clear import of N.J. Stat. Ann. § *46:8B-15(a)*, N.J. Stat. Ann. § *46:8B-14(c)*, and N.J. Stat. Ann. § *46:8B-12.1* is that a condominium association may be sued for its failure to administer or manage the common elements in a lawful manner and for its acts in enforcing discriminatory provisions of the master deed or bylaws. Accordingly, when a handicapped tenant brought suit to enforce his federal rights, the association was a proper defendant. *Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997)*.

Civil Procedure: Class Actions: Derivative Actions: General Overview

Unit owner could act on a common element claim only upon the condominium association's failure to do so; in that event, the unit owner's claim would be considered derivative in nature, the condominium association would have to be named a party, and *N.J. Ct. R. 4:32-5* would be applicable. *Siller v. Hartz Mountain Associates, 93 N.J. 370, 461 A.2d 568, 1983 N.J. LEXIS 2713 (N.J.)*, cert. denied, *464 U.S. 961, 104 S. Ct. 395, 78 L. Ed. 2d 337, 1983 U.S. LEXIS 2269 (U.S. 1983)*.

Civil Procedure: Summary Judgment: Burdens of Production & Proof: Nonmovants

Where plaintiff sued defendant condominium association and others over injuries she sustained when a condominium building's elevator doors closed on her, the trial court erred in granting defendants summary judgment on the grounds plaintiff failed to make out a prima facie case of negligence; under the dictates of *Jerista v. Murray, 883 A.2d 350 (N.J. 2005)*, the res ipsa inference of negligence was applicable because common experience instructed that elevator doors ordinarily should not strike a person entering or exiting an elevator in the absence of

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negligence, and to warrant the inference, plaintiff had no obligation to exclude other possible causes that might explain the malfunctioning of the elevator doors or to show that defendants were on notice of some defect in the doors’ operation. *2018 N.J. LEXIS 922*.

Civil Procedure: Alternative Dispute Resolution: General Overview

Alternative dispute resolution requirements in the Condominium Act and the Planned Real Estate Development Full Disclosure Act do not prohibit a unit owner or a condominium association from initiating litigation without first submitting the dispute to alternative dispute resolution, if there are compelling circumstances. *Finderne Heights Condominium Ass'n v. Rabinowitz, 390 N.J. Super. 154, 915 A.2d 16, 2007 N.J. Super. LEXIS 12 (App.Div. 2007)*.

Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability

Superior Court of New Jersey, Appellate Division holds that the term housing-related disputes in the Condominium Act, N.J. Stat. Ann. § *46:8B-14(k)*, refers to any dispute arising directly from the condominium relationship and is to be construed broadly. *Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.)*, certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

Trial court erred by granting a condominium association summary judgment in its suit against two unit owners for unpaid special assessments, because the term housing-related disputes set forth in the Condominium Act, N.J. Stat. Ann. § *46:8B-14(k)*, was construed broadly and referred to any dispute arising from the condominium relationship, including the special assessment disagreement between the parties, therefore, the dispute was subject to arbitration. *Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507, 33 A.3d 1235, 2012 N.J. Super. LEXIS 4 (App.Div.)*, certif. denied, *210 N.J. 217, 42 A.3d 889, 2012 N.J. LEXIS 552 (N.J. 2012)*.

Civil Rights Law: Contractual Relations & Housing: Fair Housing Rights: Disability Discrimination

Clear import of N.J. Stat. Ann. § *46:8B-15(a)*, N.J. Stat. Ann. § *46:8B-14(c)*, and N.J. Stat. Ann. § *46:8B-12.1* is that a condominium association may be sued for its failure to administer or manage the common elements in a lawful manner and for its acts in enforcing discriminatory provisions of the master deed or bylaws. Accordingly, when a handicapped tenant brought suit to enforce his federal rights, the association was a proper defendant. *Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997)*.

Insurance Law: Claims & Contracts: Subrogation: General Overview

Trial court properly granted summary judgment enforcing a waiver of subrogation provision in an action commenced by the insurer of an insured condominium unit owner against an uninsured unit owner seeking to recover for water damage as the waiver provision was enforceable under the condominium association's by-laws and N.J. Stat. Ann. § *46:8B-14(d)* and (e). By the insurer issuing its policy to the insured unit owner with a waiver of subrogation provision, it had no expectation that it would be able to pursue a claim against a negligent unit owner, even an uninsured unit owner. *Skulskie v. Ceponis, 404 N.J. Super. 510, 962 A.2d 589, 2009 N.J. Super. LEXIS 8 (App.Div. 2009)*.

Insurance Law: Claims & Contracts: Subrogation: Contractual Subrogation

Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since

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the association's by-laws compelled a waiver of such claims. *Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018)*.

Insurance Law: General Liability Insurance: Coverage: Triggers: General Overview

First-party insurance, obtained by condominium owner pursuant to N.J. Stat. Ann. § *46:8B-14(d)*, covered damages to the building foundation caused by inadequate water drainage under the manifest trigger rule, rather than the continuous trigger rule because the case involved first-party property damage coverage, not third-party liability coverage. *Winding Hills Condo. Ass'n, Inc. v. North Am. Specialty Ins. Co., 332 N.J. Super. 85, 752 A.2d 837, 2000 N.J. Super. LEXIS 241 (App.Div. 2000)*.

Real Property Law: Common Interest Communities: Condominiums: General Overview

Trial court properly granted summary judgment in favor of a homeowners' association where the association measured the size of condominiums within the association, and despite objections from condominium owners, the association had the authority to make the assessments for variable expenses based on the size of the individual units, pursuant to N.J. Stat. Ann. § *46:8B-14(a)*, and the association's assessments were neither fraudulent or unreasonable. *Owners of the Manor Homes of Whittingham v. Whittingham Homeowners Ass'n, Inc., 367 N.J. Super. 314, 842 A.2d 853, 2004 N.J. Super. LEXIS 91 (App.Div. 2004)*.

Clear import of N.J. Stat. Ann. § *46:8B-15(a)*, N.J. Stat. Ann. § *46:8B-14(c)*, and N.J. Stat. Ann. § *46:8B-12.1* is that a condominium association may be sued for its failure to administer or manage the common elements in a lawful manner and for its acts in enforcing discriminatory provisions of the master deed or bylaws. Accordingly, when a handicapped tenant brought suit to enforce his federal rights, the association was a proper defendant. *Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997)*.

N.J. Stat. Ann. § *46:8B-14(c)* places the duty of enforcing a condominium's bylaws and master deed upon a condominium association. *Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997)*.

Unit owner could act on a common element claim only upon the condominium association's failure to do so; in that event, the unit owner's claim would be considered derivative in nature, the condominium association would have to be named a party, and *N.J. Ct. R. 4:32-5* would be applicable. *Siller v. Hartz Mountain Associates, 93 N.J. 370, 461 A.2d 568, 1983 N.J. LEXIS 2713 (N.J.)*, cert. denied, *464 U.S. 961, 104 S. Ct. 395, 78 L. Ed. 2d 337, 1983 U.S. LEXIS 2269 (U.S. 1983)*.

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since the association's by-laws compelled a waiver of such claims. *Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018)*.

In a premises liability case, the court reversed the directed verdict granted to the association and dismissing the residents' negligence claim because the association had a statutory duty to maintain the common areas, including a duty to identify and correct dangerous conditions and that duty extended to residents of the condominium building, regardless of their characterization as licensees or invitees. *Lechler v. 303 Sunset Ave. Condo. Ass'n, 452 N.J. Super. 574, 178 A.3d 711, 2017 N.J. Super. LEXIS 175 (App.Div. 2017)*.

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Homeowners association and management company of a common-interest community were not immune from plaintiff's slip and fall claim because the sidewalk on which she fell on ice constituted a private sidewalk, as it was part of the common area owned by the association, and the association’s by-laws and statutory obligations required it to manage and maintain the community’s common areas. *Qian v. Toll Bros. Inc., 223 N.J. 124, 121 A.3d 363, 2015 N.J. LEXIS 825 (N.J. 2015)*.

In a massive construction lawsuit, a trial court erred by holding that the condominium association lacked standing to file the suit because it was legally responsible for the upkeep of the common areas and was authorized by statute to sue for damage to those areas; further, the unit owners' post-filing ratification approving the litigation on their behalf was proper. *Port Liberte II Condominium Ass'n, Inc. v. New Liberty Residential Urban Renewal Co., LLC, 435 N.J. Super. 51, 86 A.3d 730, 2014 N.J. Super. LEXIS 19 (App.Div. 2014)*.

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Harmonization of the Municipal Land Use Law (MLUL), N.J. Stat. Ann. §§ *40:55D-1* — *40:55D-163*, with the Condominium Act, N.J. Stat. Ann. §§ *46:8B-1* to *46:8B-38*, invests a condominium association, not individual condominium unit owners, with the right to participate in a zoning protest petition pursuant to the MLUL, N.J. Stat. Ann. § *40:55D-63*. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

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Under the Condominium Act, N.J. Stat. Ann. § *46:8B-1* et seq. a condominium association could institute an action on behalf of the unit owners for damages to common elements caused by third persons; because the association and not the individual units owners was responsible for the common elements under N.J. Stat. Ann. § *46:8B-14*, individual unit owners could not prosecute claims regarding common elements. *Siller v. Hartz Mountain Associates, 93 N.J. 370, 461 A.2d 568, 1983 N.J. LEXIS 2713 (N.J.)*, cert. denied, *464 U.S. 961, 104 S. Ct. 395, 78 L. Ed. 2d 337, 1983 U.S. LEXIS 2269 (U.S. 1983)*.

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Torts: Negligence: Proof: Res Ipsa Loquitur: Elements: Type of Event

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Torts: Premises Liability & Property: General Premises Liability: Dangerous Conditions: Duty to Maintain

In a premises liability case, the court reversed the directed verdict granted to the association and dismissing the residents' negligence claim because the association had a statutory duty to maintain the common areas, including a duty to identify and correct dangerous conditions and that duty extended to residents of the condominium building, regardless of their characterization as licensees or invitees. *Lechler v. 303 Sunset Ave. Condo. Ass'n, 452 N.J. Super. 574, 178 A.3d 711, 2017 N.J. Super. LEXIS 175 (App.Div. 2017)*.

Torts: Premises Liability & Property: General Premises Liability: Duties of Care: Duty off Premises: Sidewalks & Streets

Homeowners association and management company of a common-interest community were not immune from plaintiff's slip and fall claim because the sidewalk on which she fell on ice constituted a private sidewalk, as it was part of the common area owned by the association, and the association’s by-laws and statutory obligations required it to manage and maintain the community’s common areas. *Qian v. Toll Bros. Inc., 223 N.J. 124, 121 A.3d 363, 2015 N.J. LEXIS 825 (N.J. 2015)*.

Appellate court properly upheld the grant of summary judgment to a condominium association in a pedestrian's suit for negligence against it after falling and being injured on an icy sidewalk abutting the condominium complex as the condominium complex was residential and, therefore, no sidewalk liability attached for the injury to the pedestrian. *Luchejko v. City of Hoboken, 207 N.J. 191, 23 A.3d 912, 2011 N.J. LEXIS 789 (N.J. 2011)*.

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Research References & Practice Aids

Cross References:

Bylaws, see *46:8B-13*.

Powers of association, see *46:8B-15*.

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

NJ ICLE:

Commercial Real Estate Transactions in New Jersey 7.6 Condominium Documents

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N.J. Stat. § 46:8B-15

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

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§ 46:8B-15. Powers of association

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.

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(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.

All funds collected by an association shall be maintained separately in the association's name. For investment purposes only, reserve funds may be commingled with operating funds of the association. Commingled operating and reserve funds shall be accounted for separately, and a commingled account shall not, at any time, be less than the amount identified as reserve funds. A manager or business entity managing a condominium, or an agent, employee, officer, or director of an association, shall not commingle any association funds with his or her funds or with the funds of any other condominium association or the funds of another association as defined in section 3 of P.L.1977, c.419 (*C.45:22A-23*).

If authorized by the master deed or bylaws, the association may levy and collect a capital contribution, membership fee or other charge upon the initial sale or subsequent resale of a unit, which collection shall be earmarked for the purpose of maintenance of or improvements to common elements to defray common expenses or otherwise, provided that such charge shall not exceed nine times the amount of the most recent monthly common expense assessment for that unit.

(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.

History

L. 1969, c. 257, § 15; amended *1996, c. 79*, § 3; *2007, c. 165*, § 1, eff. Sept. 10, 2007.

Annotations

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Notes

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Editor's Note:

Section 2 of L. *2007, c. 165* provides: "Any master deed or bylaws provision providing for the imposition and collection of a capital contribution, membership fee or other charge upon the resale or transfer of units prior to the effective date of this act is hereby validated."

Amendment Note:

2007 amendment, by Chapter 165, added the second and third paragraphs of (e).

Case Notes

Civil Procedure: Justiciability: Standing: Third Party Standing

Civil Procedure: Parties: Capacity of Parties: General Overview

Civil Procedure: Class Actions: Derivative Actions: General Overview

Civil Procedure: Summary Judgment: Standards: General Overview

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Reasonable Fees

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Statutory Awards

Civil Rights Law: Contractual Relations & Housing: Fair Housing Rights: Disability Discrimination

Civil Rights Law: Private Discrimination

Evidence: Inferences & Presumptions: Presumptions: General Overview

Governments: Local Governments: Police Power

Governments: Public Improvements: Bridges & Roads

Real Property Law: Common Interest Communities: Condominiums: General Overview

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Real Property Law: Common Interest Communities: Homeowners Associations

Real Property Law: Construction Law: Defects

Real Property Law: Zoning & Land Use: Ordinances

Torts: Negligence: Duty: General Overview

Torts: Premises Liability & Property: Lessees & Lessors: General Overview

Transportation Law: Private Vehicles: Traffic Regulation: General Overview

Civil Procedure: Justiciability: Standing: Third Party Standing

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In a massive construction lawsuit, a trial court erred by holding that the condominium association lacked standing to file the suit because it was legally responsible for the upkeep of the common areas and was authorized by statute to sue for damage to those areas; further, the unit owners' post-filing ratification approving the litigation on their behalf was proper. *Port Liberte II Condominium Ass'n, Inc. v. New Liberty Residential Urban Renewal Co., LLC, 435 N.J. Super. 51, 86 A.3d 730, 2014 N.J. Super. LEXIS 19 (App.Div. 2014)*.

Condominium association has standing to assert claims for common law fraud and consumer fraud against third-party contractors and materialmen for defects in the construction of the common elements, regardless of whether the association formally existed when the developer contracted with the third-parties; pursuant to the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. § *45:22A-26*, any subcontractor or materialman entering into a contract or supplying a product for use in the construction of the common elements of a condominium association after the developer registers the condominium, is on constructive notice that representations made to, and omissions withheld from, the developer will be deemed as if they were made to, or withheld from, the association, once the association assumes control of the condominium. *Port Liberte Homeowners Ass'n v. Sordoni Const. Co., 393 N.J. Super. 492, 924 A.2d 592, 2007 N.J. Super. LEXIS 168 (App.Div.)*, certif. denied, *192 N.J. 479, 932 A.2d 30, 2007 N.J. LEXIS 1216 (N.J. 2007)*.

Civil Procedure: Parties: Capacity of Parties: General Overview

Clear import of N.J. Stat. Ann. § *46:8B-15(a)*, N.J. Stat. Ann. § *46:8B-14(c)*, and N.J. Stat. Ann. § *46:8B-12.1* is that a condominium association may be sued for its failure to administer or manage the common elements in a lawful manner and for its acts in enforcing discriminatory provisions of the master deed or bylaws. Accordingly, when a handicapped tenant brought suit to enforce his federal rights, the association was a proper defendant. *Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997)*.

Civil Procedure: Class Actions: Derivative Actions: General Overview

An individual unit owner could act on a common element claim only upon the condominium association's failure to do so; in that event, the unit owner's claim would be considered derivative in nature, the condominium association would have to be named a party, and *N.J. Ct. R. 4:32-5* would be applicable. *Siller v. Hartz Mountain Associates, 93 N.J. 370, 461 A.2d 568, 1983 N.J. LEXIS 2713 (N.J.)*, cert. denied, *464 U.S. 961, 104 S. Ct. 395, 78 L. Ed. 2d 337, 1983 U.S. LEXIS 2269 (U.S. 1983)*.

Civil Procedure: Summary Judgment: Standards: General Overview

In a damages action filed by a resident as a result of a flood caused by a faulty dishwasher hose in a neighbors' condominium, the motion judge did not err in granting summary judgment to the neighbors on a claim of negligence against them, as the evidence showed that they had no prior notice of the faulty hose and simply because the hose was old, they were not required to remove the dishwasher to inspect the hose underneath it; but, summary judgment in favor of the condominium association was reversed, as it was aware that similar hoses had previously broken in other condominium units, and hence, had a duty to warn the resident of the potentially dangerous condition regarding the dishwasher hose. *Siddons v. Cook, 382 N.J. Super. 1, 887 A.2d 689, 2005 N.J. Super. LEXIS 362 (App.Div. 2005)*.

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Reasonable Fees

In a Chapter 13 case, the court allowed the attorneys' fees requested by a condominium association, adjusted for one duplicative charge. The association had vindicated its right to collect past post-petition fees and associated costs, and it had protected its right to enforce payment of future fees; while the association's claim for arrearages

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on maintenance fees was for an amount much smaller than the attorneys' fees incurred, proportionality alone was no reason to reduce a fee award. *In re Passerella, 2011 Bankr. LEXIS 53 (Bankr. D.N.J. Jan. 5, 2011)*.

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Statutory Awards

N.J. Stat. Ann. § *46:8B-15(e)* suggests the intent to make early collection of arrearages an economically rational option. To reduce a fee award due to a lack of proportionality with the underlying claim for arrearages would contravene this legislative intent. *In re Passerella, 2011 Bankr. LEXIS 53 (Bankr. D.N.J. Jan. 5, 2011)*.

While N.J. Stat. Ann. § *46:8B-15(e)* expressly requires attorneys' fees to be "reasonable," it imposes no such requirement on late fees. This statute represents a legislative determination that late fees are reasonable in the context of condominium association maintenance fees. *In re Passerella, 2011 Bankr. LEXIS 53 (Bankr. D.N.J. Jan. 5, 2011)*.

Civil Rights Law: Contractual Relations & Housing: Fair Housing Rights: Disability Discrimination

Clear import of N.J. Stat. Ann. § *46:8B-15(a)*, N.J. Stat. Ann. § *46:8B-14(c)*, and N.J. Stat. Ann. § *46:8B-12.1* is that a condominium association may be sued for its failure to administer or manage the common elements in a lawful manner and for its acts in enforcing discriminatory provisions of the master deed or bylaws. Accordingly, when a handicapped tenant brought suit to enforce his federal rights, the association was a proper defendant. *Gittleman v. Woodhaven Condo. Ass'n, 972 F. Supp. 894, 1997 U.S. Dist. LEXIS 12092 (D.N.J. 1997)*.

Civil Rights Law: Private Discrimination

Summary judgment was denied to a condominium association and an association member (movants) as to condo buyers' 42 U.S.C.S. §§ *1981*, *1982*, Fair Housing Act, *42 U.S.C.S. § 3601* et seq., and New Jersey Law Against Discrimination, N.J. Stat. Ann. § *10:5-1* et seq., race discrimination claims as, inter alia, the association was properly a party to the suit under N.J. Stat. Ann. §§ *14A:3-1*, *46:8B-15(a)*, because it was a corporation, it was more than the sum of its members, and it was a separate legal entity that had a right to sue and to be sued. *Fontaine v. Cent. Square Condos., Inc., 2007 U.S. Dist. LEXIS 29380 (E.D. Pa. Apr. 19, 2007)*.

Evidence: Inferences & Presumptions: Presumptions: General Overview

Debtor's argument that the $25 late fee charged by a condominium association was unreasonable because it was assessed in the same amount regardless of the amount of the maintenance fee assessment due failed to overcome the presumption of reasonableness of the late fee. *In re Passerella, 2011 Bankr. LEXIS 53 (Bankr. D.N.J. Jan. 5, 2011)*.

Governments: Local Governments: Police Power

Simply because condominium units existed within the private community did not render the private community a condominium association subject to N.J. Stat. Ann. § *46:8B-15(f)* where there were single and multi family homes within the private community; thus, the Condominium Act did not prohibit private community from enforcing its speed limit although it formally requested that the law enforcement agency enforce its speed limitations. *State v. Panther Valley Prop. Owners Ass'n, 307 N.J. Super. 319, 704 A.2d 1010, 1998 N.J. Super. LEXIS 20 (App.Div. 1998)*.

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N.J. Stat. Ann. § 46:8B-15(f) is a tacit expression by the state legislature that any private homeowners associations, condominiums or otherwise, have no business assessing fines for motor vehicle violations once they cede enforcement jurisdiction to a public agency pursuant to N.J. Stat. Ann. § 39:5A-1. It is a recognition by the legislature that, in such circumstances, the powers of the public law enforcement agency are preemptive and exclusive. *State v. Panther Valley Prop. Owners Ass'n, 307 N.J. Super. 319, 704 A.2d 1010, 1998 N.J. Super. LEXIS 20 (App.Div. 1998)*.

Real Property Law: Common Interest Communities: Condominiums: General Overview

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Condominium association had standing to pursue Consumer Fraud Act claims for construction defects resulting in water damage; however, the association lacked standing to sue for damages to the unit windows because they were not common elements pursuant to N.J. Stat. Ann. § 46:8B-3. *Belmont Condominium Ass'n, Inc. v. Geibel, 432 N.J. Super. 52, 74 A.3d 10, 2013 N.J. Super. LEXIS 105 (App.Div.)*, certif. denied, *216 N.J. 366, 80 A.3d 747, 2013 N.J. LEXIS 1280 (N.J. 2013)*.

Harmonization of the Municipal Land Use Law (MLUL), N.J. Stat. Ann. §§ 40:55D-1 — 40:55D-163, with the Condominium Act, N.J. Stat. Ann. §§ 46:8B-1 to 46:8B-38, invests a condominium association, not individual condominium unit owners, with the right to participate in a zoning protest petition pursuant to the MLUL, N.J. Stat. Ann. § 40:55D-63. *Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011)*.

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Trial court properly determined that a condominium association, not individual condominium unit owners, had the right to participate in a zoning protest petition pursuant to the Municipal Land Use Law (MLUL), N.J. Stat. Ann. § 40:55D-63, but the amended zoning ordinance was declared invalid for the planning board's failure to follow the MLUL, N.J. Stat. Ann. § 40:55D-26(a), particularly because the borough failed to review the report of the planning board, which required, at minimum, an acknowledgment on the record that the report was reviewed. Jennings v. Borough of Highlands, 418 N.J. Super. 405, 13 A.3d 911, 2011 N.J. Super. LEXIS 46 (App.Div. 2011).

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Real Property Law: Common Interest Communities: Homeowners Associations

Where the husband became a candidate for election to the board of directors of the neighborhood association and the board sent out a candidate audit stating that the husband was not in good standing due to a parking fine that was owed, the association lacked the authority under N.J. Stat. Ann. § 15A:3-1(a)(9), (10), (16) to issue the candidate audit where its own governing documents did not contain the authority to do so; under N.J. Stat. Ann. § 15A:3-1(a) and N.J. Stat. Ann. § 46:8B-15, the authority granted under N.J. Stat. Ann. § 15A:3-1(a)(9), (10), (16)

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was effective only if included in the association's governing documents, and the fact that the board never before issued a candidate audit and resolved to do so at an unnoticed meeting that was never memorialized, contrary to N.J. Stat. Ann. § 45:22A-46, further demonstrated that the board acted beyond its authority. *Verna v. Links at Valleybrook Neighborhood Ass'n, 371 N.J. Super. 77, 852 A.2d 202, 2004 N.J. Super. LEXIS 250 (App.Div. 2004)*.

Where N.J. Stat. Ann. § 46:8B-15(f) prohibited the neighborhood association from imposing fines for moving automobile violations, but it allowed such an association to impose reasonable fines for failure to comply with existing regulations created by master deed or bylaws, this provision did not prohibit the association from prohibiting the husband from parking the business vehicle on the municipally-owned street in front of the husband's home. *Verna v. Links at Valleybrook Neighborhood Ass'n, 371 N.J. Super. 77, 852 A.2d 202, 2004 N.J. Super. LEXIS 250 (App.Div. 2004)*.

An individual unit owner could act on a common element claim only upon the condominium association's failure to do so; in that event, the unit owner's claim would be considered derivative in nature, the condominium association would have to be named a party, and N.J. Ct. R. 4:32-5 would be applicable. *Siller v. Hartz Mountain Associates, 93 N.J. 370, 461 A.2d 568, 1983 N.J. LEXIS 2713 (N.J.)*, cert. denied, *464 U.S. 961, 104 S. Ct. 395, 78 L. Ed. 2d 337, 1983 U.S. LEXIS 2269 (U.S. 1983)*.

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Condominium association had standing to pursue Consumer Fraud Act claims for construction defects resulting in water damage; however, the association lacked standing to sue for damages to the unit windows because they were not common elements pursuant to N.J. Stat. Ann. § 46:8B-3. *Belmont Condominium Ass'n, Inc. v. Geibel, 432 N.J. Super. 52, 74 A.3d 10, 2013 N.J. Super. LEXIS 105 (App.Div.)*, certif. denied, *216 N.J. 366, 80 A.3d 747, 2013 N.J. LEXIS 1280 (N.J. 2013)*.

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Torts: Negligence: Duty: General Overview

In a damages action filed by a resident as a result of a flood caused by a faulty dishwasher hose in a neighbors' condominium, the motion judge did not err in granting summary judgment to the neighbors on a claim of negligence against them, as the evidence showed that they had no prior notice of the faulty hose and simply because the hose was old, they were not required to remove the dishwasher to inspect the hose underneath it; but, summary judgment in favor of the condominium association was reversed, as it was aware that similar hoses had previously broken in other condominium units, and hence, had a duty to warn the resident of the potentially dangerous

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condition regarding the dishwasher hose. *Siddons v. Cook, 382 N.J. Super. 1, 887 A.2d 689, 2005 N.J. Super. LEXIS 362 (App.Div. 2005)*.

Torts: Premises Liability & Property: Lessees & Lessors: General Overview

In a damages action filed by a resident as a result of a flood caused by a faulty dishwasher hose in a neighbors' condominium, the motion judge did not err in granting summary judgment to the neighbors on a claim of negligence against them, as the evidence showed that they had no prior notice of the faulty hose and simply because the hose was old, they were not required to remove the dishwasher to inspect the hose underneath it; but, summary judgment in favor of the condominium association was reversed, as it was aware that similar hoses had previously broken in other condominium units, and hence, had a duty to warn the resident of the potentially dangerous condition regarding the dishwasher hose. *Siddons v. Cook, 382 N.J. Super. 1, 887 A.2d 689, 2005 N.J. Super. LEXIS 362 (App.Div. 2005)*.

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Research References & Practice Aids

NJ ICLE:

Commercial Real Estate Transactions in New Jersey 7.6 Condominium Documents

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N.J. Stat. § 46:8B-16

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

LexisNexis® New Jersey Annotated Statutes > Title 46. Property (Subts. 1 — 6) > Subtitle 2. Real Property Only (Chs. 3 — 11) > Chapter 8B. Condominiums (Arts. I — VIII) > Article IV. Condominium Association (§§ 46:8B-12 — 46:8B-18)

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

(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.

History

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

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Real Property Law: Construction Law: Defects

Torts: Negligence: Duty: General Overview

Torts: Premises Liability & Property: General Premises Liability: Duties of Care: Duty off Premises: Sidewalks & Streets

Torts: Premises Liability & Property: Lessees & Lessors: General Overview

Civil Procedure: Justiciability: Standing: General Overview

Association, as a representative body that acts on behalf of the unit owners, had standing to assert tort claims concerning the common elements and facilities of the development as if the claims were asserted directly by the unit owners individually. *1200 Grand Dt. Condominium Assoc. v. Tarragon Corp. (In re Tarragon Corp.), 2011 Bankr. LEXIS 1001 (Bankr. D.N.J. Mar. 18, 2011)*.

Civil Procedure: Justiciability: Standing: Third Party Standing

In a massive construction lawsuit, a trial court erred by holding that the condominium association lacked standing to file the suit because it was legally responsible for the upkeep of the common areas and was authorized by statute to sue for damage to those areas; further, the unit owners' post-filing ratification approving the litigation on their behalf was proper. *Port Liberte II Condominium Ass'n, Inc. v. New Liberty Residential Urban Renewal Co., LLC, 435 N.J. Super. 51, 86 A.3d 730, 2014 N.J. Super. LEXIS 19 (App.Div. 2014)*.

Condominium association has standing to assert claims for common law fraud and consumer fraud against third-party contractors and materialmen for defects in the construction of the common elements, regardless of whether the association formally existed when the developer contracted with the third-parties; pursuant to the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. § *45:22A-26*, any subcontractor or materialman entering into a contract or supplying a product for use in the construction of the common elements of a condominium association after the developer registers the condominium, is on constructive notice that representations made to, and omissions withheld from, the developer will be deemed as if they were made to, or withheld from, the association, once the association assumes control of the condominium. *Port Liberte Homeowners Ass'n v. Sordoni Const. Co., 393 N.J. Super. 492, 924 A.2d 592, 2007 N.J. Super. LEXIS 168 (App.Div.)*, certif. denied, *192 N.J. 479, 932 A.2d 30, 2007 N.J. LEXIS 1216 (N.J. 2007)*.

Civil Procedure: Summary Judgment: Standards: General Overview

In a damages action filed by a resident as a result of a flood caused by a faulty dishwasher hose in a neighbors' condominium, the motion judge did not err in granting summary judgment to the neighbors on a claim of negligence against them, as the evidence showed that they had no prior notice of the faulty hose and simply because the hose was old, they were not required to remove the dishwasher to inspect the hose underneath it; but, summary judgment in favor of the condominium association was reversed, as it was aware that similar hoses had previously broken in other condominium units, and hence, had a duty to warn the resident of the potentially dangerous

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condition regarding the dishwasher hose. *Siddons v. Cook, 382 N.J. Super. 1, 887 A.2d 689, 2005 N.J. Super. LEXIS 362 (App.Div. 2005)*.

Civil Procedure: Alternative Dispute Resolution: General Overview

Alternative dispute resolution requirements in the Condominium Act and the Planned Real Estate Development Full Disclosure Act do not prohibit a unit owner or a condominium association from initiating litigation without first submitting the dispute to alternative dispute resolution, if there are compelling circumstances. *Finderne Heights Condominium Ass'n v. Rabinowitz, 390 N.J. Super. 154, 915 A.2d 16, 2007 N.J. Super. LEXIS 12 (App.Div. 2007)*.

Civil Rights Law: Private Discrimination

In condominium buyers' 42 U.S.C.S. §§ *1981*, *1982*, Fair Housing Act, *42 U.S.C.S. § 3601* et seq., and New Jersey Law Against Discrimination, N.J. Stat. Ann. § *10:5-1* et seq., race discrimination claims against condominium association and an association member, involving the association's decision to raise the fees charged to condo owners just before the buyers were due to complete the purchase of their condo, it was not unfair to hold the association liable, given that its membership was transitory and that not all members had voted to increase the fees; pursuant to N.J. Stat. Ann. § *46:8B-16(a)*, the association could act only through its officers and, pursuant to § *46:8B-16(c)*, condo unit owners could not be personally held liable for any damage caused by the association. *Fontaine v. Cent. Square Condos., Inc., 2007 U.S. Dist. LEXIS 29380 (E.D. Pa. Apr. 19, 2007)*.

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

In a massive construction lawsuit, a trial court erred by holding that the condominium association lacked standing to file the suit because it was legally responsible for the upkeep of the common areas and was authorized by statute to sue for damage to those areas; further, the unit owners' post-filing ratification approving the litigation on their behalf was proper. *Port Liberte II Condominium Ass'n, Inc. v. New Liberty Residential Urban Renewal Co., LLC, 435 N.J. Super. 51, 86 A.3d 730, 2014 N.J. Super. LEXIS 19 (App.Div. 2014)*.

Condominium association had standing to pursue Consumer Fraud Act claims for construction defects resulting in water damage; however, the association lacked standing to sue for damages to the unit windows because they were not common elements pursuant to N.J. Stat. Ann. § *46:8B-3*. *Belmont Condominium Ass'n, Inc. v. Geibel, 432 N.J. Super. 52, 74 A.3d 10, 2013 N.J. Super. LEXIS 105 (App.Div.)*, certif. denied, *216 N.J. 366, 80 A.3d 747, 2013 N.J. LEXIS 1280 (N.J. 2013)*.

Appellate court properly upheld the grant of summary judgment to a condominium association in a pedestrian's suit for negligence against it after falling and being injured on an icy sidewalk abutting the condominium complex as the condominium complex was residential and, therefore, no sidewalk liability attached for the injury to the pedestrian. *Luchejko v. City of Hoboken, 207 N.J. 191, 23 A.3d 912, 2011 N.J. LEXIS 789 (N.J. 2011)*.

Condominium association is residential and, therefore, is not subject to sidewalk liability under long-standing New Jersey precedent that residential property owners stand on different footing than commercial owners in sidewalk liability cases. *Luchejko v. City of Hoboken, 207 N.J. 191, 23 A.3d 912, 2011 N.J. LEXIS 789 (N.J. 2011)*.

Association, as a representative body that acts on behalf of the unit owners, had standing to assert tort claims concerning the common elements and facilities of the development as if the claims were asserted directly by the unit owners individually. *1200 Grand Dt. Condominium Assoc. v. Tarragon Corp. (In re Tarragon Corp.), 2011 Bankr. LEXIS 1001 (Bankr. D.N.J. Mar. 18, 2011)*.

Condominium association has standing to assert claims for common law fraud and consumer fraud against third-party contractors and materialmen for defects in the construction of the common elements, regardless of whether

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the association formally existed when the developer contracted with the third-parties; pursuant to the Planned Real Estate Development Full Disclosure Act, N.J. Stat. Ann. § 45:22A-26, any subcontractor or materialman entering into a contract or supplying a product for use in the construction of the common elements of a condominium association after the developer registers the condominium, is on constructive notice that representations made to, and omissions withheld from, the developer will be deemed as if they were made to, or withheld from, the association, once the association assumes control of the condominium. *Port Liberte Homeowners Ass'n v. Sordoni Const. Co., 393 N.J. Super. 492, 924 A.2d 592, 2007 N.J. Super. LEXIS 168 (App.Div.)*, certif. denied, *192 N.J. 479, 932 A.2d 30, 2007 N.J. LEXIS 1216 (N.J. 2007)*.

In condominium buyers' 42 U.S.C.S. §§ 1981, 1982, Fair Housing Act, *42 U.S.C.S. § 3601* et seq., and New Jersey Law Against Discrimination, N.J. Stat. Ann. § 10:5-1 et seq., race discrimination claims against condominium association and an association member, involving the association's decision to raise the fees charged to condo owners just before the buyers were due to complete the purchase of their condo, it was not unfair to hold the association liable, given that its membership was transitory and that not all members had voted to increase the fees; pursuant to N.J. Stat. Ann. § 46:8B-16(a), the association could act only through its officers and, pursuant to § 46:8B-16(c), condo unit owners could not be personally held liable for any damage caused by the association. *Fontaine v. Cent. Square Condos., Inc., 2007 U.S. Dist. LEXIS 29380 (E.D. Pa. Apr. 19, 2007)*.

Alternative dispute resolution requirements in the Condominium Act and the Planned Real Estate Development Full Disclosure Act do not prohibit a unit owner or a condominium association from initiating litigation without first submitting the dispute to alternative dispute resolution, if there are compelling circumstances. *Finderne Heights Condominium Ass'n v. Rabinowitz, 390 N.J. Super. 154, 915 A.2d 16, 2007 N.J. Super. LEXIS 12 (App.Div. 2007)*.

Real Property Law: Construction Law: Defects

Condominium association had standing to pursue Consumer Fraud Act claims for construction defects resulting in water damage; however, the association lacked standing to sue for damages to the unit windows because they were not common elements pursuant to N.J. Stat. Ann. § 46:8B-3. *Belmont Condominium Ass'n, Inc. v. Geibel, 432 N.J. Super. 52, 74 A.3d 10, 2013 N.J. Super. LEXIS 105 (App.Div.)*, certif. denied, *216 N.J. 366, 80 A.3d 747, 2013 N.J. LEXIS 1280 (N.J. 2013)*.

Torts: Negligence: Duty: General Overview

In a damages action filed by a resident as a result of a flood caused by a faulty dishwasher hose in a neighbors' condominium, the motion judge did not err in granting summary judgment to the neighbors on a claim of negligence against them, as the evidence showed that they had no prior notice of the faulty hose and simply because the hose was old, they were not required to remove the dishwasher to inspect the hose underneath it; but, summary judgment in favor of the condominium association was reversed, as it was aware that similar hoses had previously broken in other condominium units, and hence, had a duty to warn the resident of the potentially dangerous condition regarding the dishwasher hose. *Siddons v. Cook, 382 N.J. Super. 1, 887 A.2d 689, 2005 N.J. Super. LEXIS 362 (App.Div. 2005)*.

Torts: Premises Liability & Property: General Premises Liability: Duties of Care: Duty off Premises: Sidewalks & Streets

Appellate court properly upheld the grant of summary judgment to a condominium association in a pedestrian's suit for negligence against it after falling and being injured on an icy sidewalk abutting the condominium complex as the condominium complex was residential and, therefore, no sidewalk liability attached for the injury to the pedestrian. *Luchejko v. City of Hoboken, 207 N.J. 191, 23 A.3d 912, 2011 N.J. LEXIS 789 (N.J. 2011)*.

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Condominium association is residential and, therefore, is not subject to sidewalk liability under long-standing New Jersey precedent that residential property owners stand on different footing than commercial owners in sidewalk liability cases. *Luchejko v. City of Hoboken, 207 N.J. 191, 23 A.3d 912, 2011 N.J. LEXIS 789 (N.J. 2011)*.

Torts: Premises Liability & Property: Lessees & Lessors: General Overview

In a damages action filed by a resident as a result of a flood caused by a faulty dishwasher hose in a neighbors' condominium, the motion judge did not err in granting summary judgment to the neighbors on a claim of negligence against them, as the evidence showed that they had no prior notice of the faulty hose and simply because the hose was old, they were not required to remove the dishwasher to inspect the hose underneath it; but, summary judgment in favor of the condominium association was reversed, as it was aware that similar hoses had previously broken in other condominium units, and hence, had a duty to warn the resident of the potentially dangerous condition regarding the dishwasher hose. *Siddons v. Cook, 382 N.J. Super. 1, 887 A.2d 689, 2005 N.J. Super. LEXIS 362 (App.Div. 2005)*.

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N.J. Stat. § 46:8B-17

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

LexisNexis® New Jersey Annotated Statutes > Title 46. Property (Subts. 1 — 6) > Subtitle 2. Real Property Only (Chs. 3 — 11) > Chapter 8B. Condominiums (Arts. I — VIII) > Article IV. Condominium Association (§§ 46:8B-12 — 46:8B-18)

§ 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.

History

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

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Real Property Law: Common Interest Communities: Condominiums: General Overview

Phantom condominium unit-owners may be liable for common area assessments. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

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Homeowner was properly granted summary judgment in his suit seeking reimbursement of $ 750 he paid to his condominium association, deemed a non-refundable capital contribution assessed against a homeowner when he acquired title to his home, as such violated N.J. Stat. Ann. § *46:8B-17*, which required that the common expenses for maintenance of a condominium's common elements be charged to all unit owners; furthermore, the association failed to show that the assessment was justified by any extra expenses it incurred upon a transfer of title to a unit. *Micheve, L.L.C. v. Wyndham Place at Freehold Condominium Ass'n, 381 N.J. Super. 148, 885 A.2d 35, 2005 N.J. Super. LEXIS 318 (App.Div. 2005)*, certif. denied, *186 N.J. 256, 893 A.2d 723, 2006 N.J. LEXIS 361 (N.J. 2006)*.

Trial court properly granted summary judgment in favor of a homeowners' association where the association measured the size of condominiums within the association, and despite objections from condominium owners, the association had the authority to make the assessments for common expenses based on the size of the individual units, and the association's assessments were neither fraudulent or unreasonable. *Owners of the Manor Homes of Whittingham v. Whittingham Homeowners Ass'n, Inc., 367 N.J. Super. 314, 842 A.2d 853, 2004 N.J. Super. LEXIS 91 (App.Div. 2004)*.

A condominium association breached its duty of good faith and fair dealing by denying a unit owner access to his driveway and garage for nonpayment of assessments but the owner was not expelled from the association or relieved of his duty to pay assessments by that action. *The Glen Section I Condo. Ass'n v. June, 344 N.J. Super. 371, 782 A.2d 430, 2001 N.J. Super. LEXIS 379 (App.Div. 2001)*.

Condominium association may charge a rental fee, provided the fee is reasonably related to the actual cost of reviewing the rental transaction and inspection of the rented unit; costs attendant to such review and inspection should not be deemed "common expenses," because they are not incurred for a beneficial object common to all of the owners within the complex, and should be recouped by the association by a "remedial assessment" similar to that made against a unit owner for minor repairs to his unit. *Chin v. Coventry Square Condominium Ass'n, 270 N.J. Super. 323, 637 A.2d 197, 1994 N.J. Super. LEXIS 34 (App.Div. 1994)*.

Condominium association's rules, which charged nonresident unit owners higher monthly parking fees than resident owners and required new owners to occupy their units at least a year before leasing them, were invalid because the association exceeded its authority under the Condominium Act, N.J. Stat. Ann. § *46:8B-1* et seq. *Thanasoulis v. Winston Towers 200 Asso., 110 N.J. 650, 542 A.2d 900, 1988 N.J. LEXIS 65 (N.J. 1988)*.

Tax Law: State & Local Taxes: Real Property Tax: Assessment & Valuation: General Overview

Phantom condominium unit-owners may be liable for common area assessments. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

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N.J. Stat. § 46:8B-18

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

LexisNexis® New Jersey Annotated Statutes > Title 46. Property (Subts. 1 — 6) > Subtitle 2. Real Property Only (Chs. 3 — 11) > Chapter 8B. Condominiums (Arts. I — VIII) > Article IV. Condominium Association (§§ 46:8B-12 — 46:8B-18)

§ 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.

History

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

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N.J. Stat. § 46:8B-19

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

LexisNexis® New Jersey Annotated Statutes > Title 46. Property (Subts. 1 — 6) > Subtitle 2. Real Property Only (Chs. 3 — 11) > Chapter 8B. Condominiums (Arts. I — VIII) > Article V. Taxes, Assessments and Liens (§§ 46:8B-19 — 46:8B-23)

§ 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.

History

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

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Tax Law: State & Local Taxes: Personal Property Tax: Exempt Property: General Overview

Tax Law: State & Local Taxes: Real Property Tax: General Overview

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Tax Law: State & Local Taxes: Real Property Tax: Assessment & Valuation: Assessment Methods & Timing

Tax Law: State & Local Taxes: Real Property Tax: Assessment & Valuation: Valuation

Real Property Law: Common Interest Communities: Condominiums: General Overview

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Phantom condominium units are subject to real estate tax, and to foreclosure if taxes are unpaid; and the association, as distinct from unit-owners, is not entitled to personal notice. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Phantom condominium unit-owners may be liable for common area assessments. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Since, under N.J. Stat. Ann. § *46:8B-19*, the value of common elements had to be included in individual unit assessments, based on each unit's percentage interest, the use of rental income from a unit to pay common expenses appeared to enhance the value of the 38 units at the condominium because their respective common expense payments were reduced. That value enhancement was properly reflected in the individual unit assessments. *Olde Orchard Village Condo Apartments, Inc. v. Pequannock Tp., 21 N.J. Tax 275, 2004 N.J. Tax LEXIS 7 (Tax Ct. Jan. 9, 2004)*.

By virtue of N.J. Stat. Ann. § *46:8B-19*, conversions to condominiums are treated equally and are valued as separate units based on their valuation on the appropriate assessing date. *Schwam v. Cedar Grove, 228 N.J. Super. 522, 550 A.2d 502, 1988 N.J. Super. LEXIS 404 (App.Div. 1988)*, certif. denied, *115 N.J. 76, 556 A.2d 1219, 1989 N.J. LEXIS 257 (N.J. 1989)*, certif. denied, *115 N.J. 77, 556 A.2d 1219, 1989 N.J. LEXIS 258 (N.J. 1989)*.

Where the owner converted apartments into condominiums and, following administrative approval for registration of the conversion, recorded a master deed creating and establishing the condominiums, each unit constituted a separate parcel of real property; taxes were proper on each unit as a single parcel, even though the owner was not able to sell the units and was still renting them. *Cigolini Associates v. Fairview, 208 N.J. Super. 654, 506 A.2d 811, 1986 N.J. Super. LEXIS 1173 (App.Div. 1986)*.

Township improperly assessed the value of a condominium complex, where the condominium complex had previously been an apartment complex, the assessment of the apartment complex was frozen for a two year period pursuant to the former New Jersey Freeze Act, N.J. Stat. Ann. § *54:2-43* (now N.J. Stat. Ann. § *54:51A-8*), the apartment complex was converted into a condominium complex during the two year period, the township assessed separate values for each condominium unit as required by N.J. Stat. Ann. § *46:8B-19*, and where the aggregate assessment of the condominium units exceeded the frozen, assessed value of the same property when it was an apartment complex. *Troy Village Realty Co. v. Springfield Township, 191 N.J. Super. 559, 468 A.2d 445, 1983 N.J. Super. LEXIS 1004 (App.Div. 1983)*, certif. denied, *96 N.J. 302, 475 A.2d 594, 1984 N.J. LEXIS 2596 (N.J. 1984)*.

Condominium's parking garage, in which the condominium owners had no interest other than the right to park in one space upon payment of a monthly fee, was properly assessed separately as a whole from each individual condominium unit, pursuant to N.J. Stat. Ann. § *46:8B-19* and other parts of the New Jersey Condominium Act. *Tower West Apartment Asso. v. West New York, 2 N.J. Tax 565, 1981 N.J. Tax LEXIS 55 (Tax Ct. June 25, 1981)*, aff'd, *5 N.J. Tax 478, 1982 N.J. Tax LEXIS 76 (App.Div. Oct. 26, 1982)*.

Tax Law: State & Local Taxes: Personal Property Tax: Exempt Property: General Overview

Twenty units of condominium owned by a hospital and used for the housing of resident and intern physicians and their families could not be taxed as part of a 38-unit complex because under N.J. Stat. Ann. §§ *46:8B-4* and *46:8B-19* each unit was a separate parcel of property, separately assessed and entitled to all exemptions allowed by law. *Perth Amboy General Hospital v. Perth Amboy, 176 N.J. Super. 307, 422 A.2d 1331, 1980 N.J. Super. LEXIS 730 (App.Div. 1980)*, certif. denied, *87 N.J. 352, 434 A.2d 96, 1981 N.J. LEXIS 2214 (N.J. 1981)*.

Tax Law: State & Local Taxes: Real Property Tax: General Overview

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Where a taxpayer contested that a city's single assessment of the building and land was in violation of N.J. Stat. Ann. § 46:8B-19, although the county assessed the taxpayer's property in error, the taxpayer's action was time barred, as the taxpayer failed to protest assessment timely; the general limitation in N.J. Stat. Ann. § 2A:14-1.2 allowing a civil action to be commenced within 10 years after the cause of action accrued was inapplicable. *New Jersey Transit Corp. v. City of Newark, 16 N.J. Tax 1, 1996 N.J. Tax LEXIS 17 (Tax Ct. May 28, 1996)*.

Where the owner converted apartments into condominiums and, following administrative approval for registration of the conversion, recorded a master deed creating and establishing the condominiums, each unit constituted a separate parcel of real property; taxes were proper on each unit as a single parcel, even though the owner was not able to sell the units and was still renting them. *Cigolini Associates v. Fairview, 208 N.J. Super. 654, 506 A.2d 811, 1986 N.J. Super. LEXIS 1173 (App.Div. 1986)*.

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In order to protect their property each of 84 condominium purchasers was required to pay the taxes that accrued before they assumed title and were unpaid by the seller, pursuant to N.J. Stat. Ann. § 46:8B-19; thus each had a separate claim and the insurer was entitled to apply the deductible against each claim. *Burlington County Abstract Co. v. QMA Associates, Inc., 167 N.J. Super. 398, 400 A.2d 1211, 1979 N.J. Super. LEXIS 725 (App.Div.)*, certif. denied, *81 N.J. 280, 405 A.2d 824, 1979 N.J. LEXIS 1693 (N.J. 1979)*.

Tax Law: State & Local Taxes: Real Property Tax: Assessment & Valuation: General Overview

Phantom condominium units are subject to real estate tax, and to foreclosure if taxes are unpaid; and the association, as distinct from unit-owners, is not entitled to personal notice. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Phantom condominium unit-owners may be liable for common area assessments. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Where a taxpayer contested that a city's single assessment of the building and land was in violation of N.J. Stat. Ann. § 46:8B-19, although the county assessed the taxpayer's property in error, the taxpayer's action was time barred, as the taxpayer failed to protest assessment timely; the general limitation in N.J. Stat. Ann. § 2A:14-1.2 allowing a civil action to be commenced within 10 years after the cause of action accrued was inapplicable. *New Jersey Transit Corp. v. City of Newark, 16 N.J. Tax 1, 1996 N.J. Tax LEXIS 17 (Tax Ct. May 28, 1996)*.

By virtue of N.J. Stat. Ann. § 46:8B-19, conversions to condominiums are treated equally and are valued as separate units based on their valuation on the appropriate assessing date. *Schwam v. Cedar Grove, 228 N.J. Super. 522, 550 A.2d 502, 1988 N.J. Super. LEXIS 404 (App.Div. 1988)*, certif. denied, *115 N.J. 76, 556 A.2d 1219, 1989 N.J. LEXIS 257 (N.J. 1989)*, certif. denied, *115 N.J. 77, 556 A.2d 1219, 1989 N.J. LEXIS 258 (N.J. 1989)*.

Township improperly assessed the value of a condominium complex, where the condominium complex had previously been an apartment complex, the assessment of the apartment complex was frozen for a two year period pursuant to the former New Jersey Freeze Act, N.J. Stat. Ann. § 54:2-43 (now N.J. Stat. Ann. § 54:51A-8), the apartment complex was converted into a condominium complex during the two year period, the township assessed separate values for each condominium unit as required by N.J. Stat. Ann. § 46:8B-19, and where the aggregate

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assessment of the condominium units exceeded the frozen, assessed value of the same property when it was an apartment complex. *Troy Village Realty Co. v. Springfield Township, 191 N.J. Super. 559, 468 A.2d 445, 1983 N.J. Super. LEXIS 1004 (App.Div. 1983)*, certif. denied, *96 N.J. 302, 475 A.2d 594, 1984 N.J. LEXIS 2596 (N.J. 1984)*.

Tax Law: State & Local Taxes: Real Property Tax: Assessment & Valuation: Assessment Methods & Timing

In an action contesting assessments under the New Jersey Condominium Act on apartments converted to condominiums, the value of each unit was to be determined by using cash equivalency principles using a 10 percent interest rate offered to buyers who were not tenants at conversion; the parties were ordered to submit computations showing the true value of each property and views on the applicability of N.J. Stat. Ann. § *54:51A-6* to each unit. *Presidential Towers v. Passaic, 6 N.J. Tax 406, 1984 N.J. Tax LEXIS 46 (Tax Ct. Apr. 4, 1984)*, aff'd, *7 N.J. Tax 655, 1985 N.J. Tax LEXIS 50 (App.Div. Feb. 4, 1985)*.

Condominium's parking garage, in which the condominium owners had no interest other than the right to park in one space upon payment of a monthly fee, was properly assessed separately as a whole from each individual condominium unit, pursuant to N.J. Stat. Ann. § *46:8B-19* and other parts of the New Jersey Condominium Act. *Tower West Apartment Asso. v. West New York, 2 N.J. Tax 565, 1981 N.J. Tax LEXIS 55 (Tax Ct. June 25, 1981)*, aff'd, *5 N.J. Tax 478, 1982 N.J. Tax LEXIS 76 (App.Div. Oct. 26, 1982)*.

Tax Law: State & Local Taxes: Real Property Tax: Assessment & Valuation: Valuation

Assessment of several campsites in a condominium campground community, zoned as "seasonal recreational", was proper under N.J. Stat. Ann. § *54:4-1* and N.J. Stat. Ann. § *54:4-23* because the cost and acreage approaches used by the taxpayers' expert improperly used the sale of the entire campground before development and the pre-sale tax assessment of the property as a part of the calculation of value and because the uniformity of assessment required the assessment of each campsite under N.J. Stat. Ann. § *46:8B-19* based on its market value, the standard value required by N.J. Const. art. VIII, § *1, para. 1*. *Tall Timbers, Inc. v. Vernon Township, 5 N.J. Tax 299, 1983 N.J. Tax LEXIS 44 (Tax Ct. Mar. 17, 1983)*, overruled, *West Milford v. Van Decker, 235 N.J. Super. 1, 561 A.2d 607, 1989 N.J. Super. LEXIS 263 (App.Div. 1989)*.

Research References & Practice Aids

NJ ICLE:

Commercial Real Estate Transactions in New Jersey 7.3 Developer's Perspective

Commercial Real Estate Transactions in New Jersey 7.4 Purchaser's Perspective

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N.J. Stat. § 46:8B-20

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

LexisNexis® New Jersey Annotated Statutes > Title 46. Property (Subts. 1 — 6) > Subtitle 2. Real Property Only (Chs. 3 — 11) > Chapter 8B. Condominiums (Arts. I — VIII) > Article V. Taxes, Assessments and Liens (§§ 46:8B-19 — 46:8B-23)

§ 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.

History

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

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N.J. Stat. § 46:8B-21

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

LexisNexis® New Jersey Annotated Statutes > Title 46. Property (Subts. 1 — 6) > Subtitle 2. Real Property Only (Chs. 3 — 11) > Chapter 8B. Condominiums (Arts. I — VIII) > Article V. Taxes, Assessments and Liens (§§ 46:8B-19 — 46:8B-23)

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

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 any late fees, fines, expenses, and reasonable attorney's fees imposed or incurred in the collection of the unpaid assessment; 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. This limited priority shall be cumulatively renewed on an annual basis as necessary.

(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) Except for the cumulative annual renewal of the limited priority provided in paragraph (1) of this subsection, 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, not including the cumulative annual renewal of the limited priority provided in paragraph (1) of this subsection, has

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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.

History

L. 1969, c. 257, § 21; amended *1995, c. 354*, § 4; *1996, c. 79*, § 5; *1997, c. 190*, § 2; *2019, c. 68*, § 1, eff. Apr. 29, 2019.

Annotations

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Notes

Amendment Notes

2019 amendment, by Chapter 68, substituted “any late fees, fines, expenses, and reasonable attorney’s fees imposed or incurred in the collection of the unpaid assessment” for “if authorized by the master deed or bylaws, late fees, fines and reasonable attorney's fees” in the first sentence of a.; added the second sentence of b.(1); added “Except for the cumulative annual renewal of the limited priority provided in paragraph (1) of this subsection” in b.(4); and inserted “not including the cumulative annual renewal of the limited priority provided in paragraph (1) of this subsection” in b.(5).

Case Notes

Bankruptcy Law: Claims: Types: Secured Claims & Liens

Bankruptcy Law: Cramdowns

Bankruptcy Law: Individuals With Regular Income: Plans: Confirmation: Nonconsensual Confirmations

Bankruptcy Law: Individuals With Regular Income: Plans: Contents

Civil Procedure: Remedies: Costs & Attorney Fees: General Overview

Contracts Law: Secured Transactions: General Overview

Real Property Law: Common Interest Communities: Condominiums: General Overview

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Real Property Law: Common Interest Communities: Condominiums: Management

Real Property Law: Deeds: General Overview

Real Property Law: Financing: Mortgages & Other Security Instruments: Foreclosures: General Overview

Real Property Law: Financing: Mortgages & Other Security Instruments: Mortgagee's Interests

Real Property Law: Nonmortgage Liens: Lien Priorities

Tax Law: State & Local Taxes: Real Property Tax: Collection: Tax Liens

Bankruptcy Law: Claims: Types: Secured Claims & Liens

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Because homeowners association's claim was supported by two liens, one that was statutory pursuant to New Jersey Condominium Act and one that was consensual pursuant to parties' agreement, claim did not fall within ambit of refuge from modification for claim secured "only" by security interest in real property, and therefore could be modified by debtors' Chapter 13 plan. *In re Keise, 564 B.R. 255, 2017 Bankr. LEXIS 593 (Bankr. D.N.J. 2017)*, rev'd, *2018 U.S. Dist. LEXIS 14554 (D.N.J. Jan. 30, 2018)*.

Bankruptcy Law: Cramdowns

Chapter 13 debtor was not precluded under *11 U.S.C.S. § 1322* from proposing a plan that bifurcated a claim a condominium association filed against her bankruptcy estate into a secured claim and an unsecured claim because the association's claim was based on both a consensual lien under a master deed and a statutory lien under *N.J. Stat. Ann. § 46:8B-21*, and § 1322 only pertained to consensual liens; although the debtor was allowed to bifurcate the association's claim into a secured claim and an unsecured claim, the association had a secured claim in the amount of $1,500 under § *46:8B-21* for six months of assessments the debtor owed which took priority over other secured claims creditors held on her residence. *In re Smiley, 569 B.R. 377, 2017 Bankr. LEXIS 1948 (Bankr. D.N.J. 2017)*.

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Bankruptcy Court's holding that, in Chapter 13 plan, unsecured portion of condominium association lien could be stripped off was error because, by operation of New Jersey's Condominium Act, association's lien had limited priority over mortgage on property and therefore could not be stripped off under Bankruptcy Code's anti-modification provision. *Whispering Woods Condo. Ass'n v. Rones (In re Rones), 551 B.R. 162, 2016 U.S. Dist. LEXIS 18742 (D.N.J. 2016)*.

Bankruptcy Law: Individuals With Regular Income: Plans: Confirmation: Nonconsensual Confirmations

Where condominium association objected to Chapter 13 plan because it argued that anti-modification provisions prohibited bifurcation of its lien, objection was overruled because lien was security interest, its treatment in plan was not bifurcation, and balance after payment of six-month accrued fees amount given statutory priority under New Jersey Condominium Association Act could be stripped off because it was wholly unsecured. *In re Rones, 531 B.R. 526, 2015 Bankr. LEXIS 1936 (Bankr. D.N.J. 2015)*, rev'd, in part, *551 B.R. 162, 2016 U.S. Dist. LEXIS 18742 (D.N.J. 2016)*.

Bankruptcy Law: Individuals With Regular Income: Plans: Contents

Court denied confirmation of a Chapter 13 bankruptcy plan which proposed to reclassify a claim in the amount of $36,585 a condominium association filed against a debtor's bankruptcy estate from a secured claim to a partially secured claim because the plan violated the Anti-Modification provision found in *11 U.S.C.S. § 1322*; the association derived its right to place liens on the debtor's condominium under a master deed it recorded, it had a "security interest" in the debtor's condominium, its claim was partially secured and had priority status under *N.J. Stat. Ann. § 46:8B-21*, and because a portion of its claim was secured by the debtor's principal residence, no portion of the claim could be modified under the debtor's plan. *In re Holmes, 573 B.R. 549, 2017 Bankr. LEXIS 3182 (Bankr. D.N.J. 2017)*, rev'd, *603 B.R. 757, 2019 U.S. Dist. LEXIS 85478 (D.N.J. 2019)*.

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Civil Procedure: Remedies: Costs & Attorney Fees: General Overview

Home owners association was entitled to reimbursement of reasonable attorney's fees necessary to obtain payment of assessed maintenance charges on unsold units that were foreclosed on under N.J. Stat. Ann. § *46:8B-21*; while the by-laws did not speak to the foreclosure situation, provisions of the master deed make the results binding on the unit owners. Park Place E. Condominium Ass`n v. *Hovbilt, 279 N.J. Super. 319, 652 A.2d 781, 1994 N.J. Super. LEXIS 535 (Ch.Div. 1994)*.

Provision of N.J. Stat. Ann. § *46:8B-21* permitting recovery of attorney's fees for enforcement of a condominium association's assessment lien did not clash with the formula for the award of fees in mortgage foreclosure provided in *N.J. Ct. R. 4:42-9(a)(4)*. *Island House Condominium Ass'n v. Feldman, 245 N.J. Super. 407, 585 A.2d 982, 1990 N.J. Super. LEXIS 471 (Ch.Div. 1990)*.

Contracts Law: Secured Transactions: General Overview

Association had a lien which arose from the master deed and N.J. Stat. Ann. § *46:8B-21*. Second, the association filed a valid Notice of Assessment Lien with the county clerk for unpaid assessments, and those unpaid assessments did not appear to have been satisfied; as such, the association had a lien for at least the amount of that notice, $1,362. *In re Robinson, 2012 Bankr. LEXIS 1033 (Bankr. D.N.J. Mar. 2, 2012)*.

Real Property Law: Common Interest Communities: Condominiums: General Overview

N.J. Ct. R. 4:42-9(a)(8) governs the application for counsel fees under the New Jersey Condominium Act, *N.J. Stat. 46:8B-1* et seq., and a trial court erred by awarding "reasonable" attorney's fees to a condominium association that sued a unit owner without considering an affidavit of services addressing the factors enumerated by *N.J. Ct. R. Prof. Conduct 1.5(a)*. *The Glen Section I Condo. Ass'n v. June, 344 N.J. Super. 371, 782 A.2d 430, 2001 N.J. Super. LEXIS 379 (App.Div. 2001)*.

Because the condominium association's filing of a lien against the condominium owner was a "form of taking," due to the fact that it destroyed the ability of the condominium owner to convey marketable title, the condominium owner was entitled to constitutionally guaranteed due process, as well as the process guaranteed by N.J. Stat. Ann. § *46:8B-21*; the proper balancing of the rights of both the condominium owner and the condominium association required that the association should have provided simultaneous notice, or notice within a reasonable time thereafter, of the recording of the lien. *Loigman v. Kings Landing Condo. Ass'n, 324 N.J. Super. 97, 734 A.2d 367, 1999 N.J. Super. LEXIS 290 (Ch.Div. 1999)*.

Summary judgment granted in favor of a condominium council and owners' association in an action to collect overdue common expenses from a condominium owner included reasonable attorney's fees because the master deed provided for an award of attorney's fees; although the New Jersey Condominium Act, N.J. Stat. Ann. § *46:8B-1* et seq., did not reference actions at law for the collection of overdue assessments, the justification for an award of attorney's fees was the same regardless of whether the action sounded in equity (foreclosure) or law (damages). *Holbert v. Great Gorge Village S. Condominium Council, 281 N.J. Super. 222, 656 A.2d 1315, 1994 N.J. Super. LEXIS 616 (Ch.Div. 1994)*.

Provision of N.J. Stat. Ann. § *46:8B-21* permitting recovery of attorney's fees for enforcement of a condominium association's assessment lien did not clash with the formula for the award of fees in mortgage foreclosure provided in *N.J. Ct. R. 4:42-9(a)(4)*. *Island House Condominium Ass'n v. Feldman, 245 N.J. Super. 407, 585 A.2d 982, 1990 N.J. Super. LEXIS 471 (Ch.Div. 1990)*.

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

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Court denied confirmation of a Chapter 13 bankruptcy plan which proposed to reclassify a claim in the amount of $36,585 a condominium association filed against a debtor's bankruptcy estate from a secured claim to a partially secured claim because the plan violated the Anti-Modification provision found in *11 U.S.C.S. § 1322*; the association derived its right to place liens on the debtor's condominium under a master deed it recorded, it had a "security interest" in the debtor's condominium, its claim was partially secured and had priority status under *N.J. Stat. Ann. § 46:8B-21*, and because a portion of its claim was secured by the debtor's principal residence, no portion of the claim could be modified under the debtor's plan. *In re Holmes, 573 B.R. 549, 2017 Bankr. LEXIS 3182 (Bankr. D.N.J. 2017)*, rev'd, *603 B.R. 757, 2019 U.S. Dist. LEXIS 85478 (D.N.J. 2019)*.

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Plaintiff's motion to vacate the condominium association's redemption of tax sale certificate was granted because plaintiff's tax sale certificate denoted a lien that has a higher priority than that of the condominium association's lien under *N.J.S.A. § 46:8B-21(b)*. *JNH Funding Corp. v. Ayed, 450 N.J. Super. 271, 161 A.3d 775, 2017 N.J. Super. LEXIS 75 (Ch.Div. 2017)*.

Bankruptcy Court's holding that, in Chapter 13 plan, unsecured portion of condominium association lien could be stripped off was error because, by operation of New Jersey's Condominium Act, association's lien had limited priority over mortgage on property and therefore could not be stripped off under Bankruptcy Code's anti-modification provision. *Whispering Woods Condo. Ass'n v. Rones (In re Rones), 551 B.R. 162, 2016 U.S. Dist. LEXIS 18742 (D.N.J. 2016)*.

Where condominium association objected to Chapter 13 plan because it argued that anti-modification provisions prohibited bifurcation of its lien, objection was overruled because lien was security interest, its treatment in plan was not bifurcation, and balance after payment of six-month accrued fees amount given statutory priority under New Jersey Condominium Association Act could be stripped off because it was wholly unsecured. *In re Rones, 531 B.R. 526, 2015 Bankr. LEXIS 1936 (Bankr. D.N.J. 2015)*, rev'd, in part, *551 B.R. 162, 2016 U.S. Dist. LEXIS 18742 (D.N.J. 2016)*.

Although the master deed of a condominium stated that the condominium association had a lien against the unit of bankruptcy debtors which developed the condominium for unpaid fees, the association failed to record the lien as required by N.J. Stat. Ann. § *46:8B-21* and thus the association had no lien against the debtors' unit for fees assessed prior to the confirmation of the debtors' plan of reorganization. *One Hudson Park Condo. Ass'n v. Tarragon Corp. (In re Tarragon Corp.), 2012 Bankr. LEXIS 1080 (Bankr. D.N.J. Mar. 13, 2012)*.

Although the master deed of a condominium stated that the condominium association had a lien against the unit of bankruptcy debtors which developed the condominium for unpaid fees, the association failed to record the lien as required by N.J. Stat. Ann. § *46:8B-21* and thus the association had no lien against the debtors' unit for fees assessed prior to the confirmation of the debtors' plan of reorganization. *One Hudson Park Condo. Ass'n v. Tarragon Corp. (In re Tarragon Corp.), 2012 Bankr. LEXIS 1080 (Bankr. D.N.J. Mar. 13, 2012)*.

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Nothing in N.J. Stat. Ann. § 46:8B-21 suggests that the limited super priority is a condominium association's exclusive remedy for unpaid assessments accrued during the tenure of a mortgagee in possession, or restricts the association's ability to further seek a money judgment against that defaulting party; accordingly, N.J. Stat. Ann. § 46:8B-21 is not a statutory bar to payment of common charges under N.J. Stat. Ann. § 46:8B-3(e) by a mortgagee in possession during the pendency of foreclosure proceedings. Woodview Condominium Ass'n, Inc. v. Shanahan, 391 N.J. Super. 170, 917 A.2d 790, 2007 N.J. Super. LEXIS 53 (App.Div. 2007).

Real Property Law: Common Interest Communities: Condominiums: Management

Although the master deed of a condominium stated that the condominium association had a lien against the unit of bankruptcy debtors which developed the condominium for unpaid fees, the association failed to record the lien as required by N.J. Stat. Ann. § 46:8B-21 and thus the association had no lien against the debtors' unit for fees assessed prior to the confirmation of the debtors' plan of reorganization. One Hudson Park Condo. Ass'n v. Tarragon Corp. (In re Tarragon Corp.), 2012 Bankr. LEXIS 1080 (Bankr. D.N.J. Mar. 13, 2012).

Real Property Law: Deeds: General Overview

N.J. Stat. Ann. §§ 46:16-1 and 46:16-2 authorized the recording of plaintiff's declaration, and after defendant took title, plaintiff filed its notice of lien in the county clerk's office, expressly setting forth the lien against defendant; the clerk was requested to file the notice pursuant to N.J. Stat. Ann. § 46:8B-21, the condominium statute; however, the community development was not a condominium and that statute was not applicable. Nevertheless, the notice was not a necessary predicate to the foreclosure action and was to be treated as surplusage; the foreclosure action was an appropriate procedure utilized for the purpose of enforcing the lien imposed by the declaration. Rittenhouse Park Community Asso. v. Katznelson, 223 N.J. Super. 595, 539 A.2d 334, 1987 N.J. Super. LEXIS 1457 (Ch.Div. 1987).

Real Property Law: Financing: Mortgages & Other Security Instruments: Foreclosures: General Overview

Provision of N.J. Stat. Ann. § 46:8B-21 permitting recovery of attorney's fees for enforcement of a condominium association's assessment lien did not clash with the formula for the award of fees in mortgage foreclosure provided in N.J. Ct. R. 4:42-9(a)(4). Island House Condominium Ass'n v. Feldman, 245 N.J. Super. 407, 585 A.2d 982, 1990 N.J. Super. LEXIS 471 (Ch.Div. 1990).

Real Property Law: Financing: Mortgages & Other Security Instruments: Mortgagee's Interests

Nothing in N.J. Stat. Ann. § 46:8B-21 suggests that the limited super priority is a condominium association's exclusive remedy for unpaid assessments accrued during the tenure of a mortgagee in possession, or restricts the association's ability to further seek a money judgment against that defaulting party; accordingly, N.J. Stat. Ann. § 46:8B-21 is not a statutory bar to payment of common charges under N.J. Stat. Ann. § 46:8B-3(e) by a mortgagee in possession during the pendency of foreclosure proceedings. Woodview Condominium Ass'n, Inc. v. Shanahan, 391 N.J. Super. 170, 917 A.2d 790, 2007 N.J. Super. LEXIS 53 (App.Div. 2007).

Real Property Law: Nonmortgage Liens: Lien Priorities

At the time of the mortgage agreement in 1992, mortgage corporation could not have considered the possibility of a condominium association lien taking priority because N.J. Stat. Ann. § 46:8B-21, the statute granting the association a priority, was not enacted until almost four years later. Chase Manhattan Mortg. Corp. v. Spina, 325

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N.J. Super. 42, 737 A.2d 704, 1998 N.J. Super. LEXIS 569 (Ch.Div. 1998), aff'd, 325 N.J. Super. 1, 737 A.2d 682, 1999 N.J. Super. LEXIS 309 (App.Div. 1999).

Tax Law: State & Local Taxes: Real Property Tax: Collection: Tax Liens

Plaintiff's motion to vacate the condominium association's redemption of tax sale certificate was granted because plaintiff's tax sale certificate denoted a lien that has a higher priority than that of the condominium association's lien under N.J.S.A. § 46:8B-21(b). JNH Funding Corp. v. Ayed, 450 N.J. Super. 271, 161 A.3d 775, 2017 N.J. Super. LEXIS 75 (Ch.Div. 2017).

Research References & Practice Aids

Cross References:

Mortgage deemed first lien., see 17:12B-11.

Bylaws, see 46:8B-13.

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

NJ ICLE:

Commercial Real Estate Transactions in New Jersey 7.4 Purchaser's Perspective

PRACTICE GUIDES & TREATISES:

New Jersey Transaction Guide § 130.20 et seq. Creation of Condominiums

New Jersey Transaction Guide § 130.30 et seq. Administration of Condominiums

PRACTICE FORMS:

7-130 New Jersey Transaction Guide § 130.250, Notice of Assessment Lien on a Condominium Unit

7-130 New Jersey Transaction Guide § 130.251, Discharge of Assessment Lien on Condominium Unit

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N.J. Stat. § 46:8B-22

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

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§ 46:8B-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*).

History

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

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N.J. Stat. § 46:8B-23

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§ 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.

History

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

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N.J. Stat. § 46:8B-24

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LexisNexis® New Jersey Annotated Statutes > Title 46. Property (Subts. 1 — 6) > Subtitle 2. Real Property Only (Chs. 3 — 11) > Chapter 8B. Condominiums (Arts. I — VIII) > Article VI. Damage; Condemnation (§§ 46:8B-24 — 46:8B-25)

§ 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.

History

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

Annotations

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Insurance Law: Claims & Contracts: Subrogation: Contractual Subrogation

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Insurance Law: Claims & Contracts: Subrogation: Contractual Subrogation

Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since the association's by-laws compelled a waiver of such claims. *Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018)*.

Real Property Law: Common Interest Communities: Condominiums: Condominium Associations

Condominium association's (association's) motion for summary judgment was granted because the insurance carrier was barred from maintaining the subrogation claim on behalf of a unit owner against the association since the association's by-laws compelled a waiver of such claims. *Universal N. Am. Ins. Co. v. Bridgepointe Condo. Ass'n, 456 N.J. Super. 480, 195 A.3d 543, 2018 N.J. Super. LEXIS 150 (Law Div. 2018)*.

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N.J. Stat. § 46:8B-25

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LexisNexis® New Jersey Annotated Statutes > Title 46. Property (Subts. 1 — 6) > Subtitle 2. Real Property Only (Chs. 3 — 11) > Chapter 8B. Condominiums (Arts. I — VIII) > Article VI. Damage; Condemnation (§§ 46:8B-24 — 46:8B-25)

§ 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.

History

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

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N.J. Stat. § 46:8B-26

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§ 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.

History

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

Annotations

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Real Property Law: Common Interest Communities: Condominiums: Termination

Real Property Law: Financing: Mortgages & Other Security Instruments: Foreclosures: General Overview

Real Property Law: Common Interest Communities: Condominiums: Termination

Condominium association was empowered to tax the phantom units, and to foreclose on the tax sale certificate after the taxes were unpaid, but its right to remove the phantom units required the unanimous consent of the unit owners. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Real Property Law: Financing: Mortgages & Other Security Instruments: Foreclosures: General Overview

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Condominium association was empowered to tax the phantom units, and to foreclose on the tax sale certificate after the taxes were unpaid, but its right to remove the phantom units required the unanimous consent of the unit owners. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

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N.J. Stat. § 46:8B-27

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§ 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.

History

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

Annotations

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Real Property Law: Common Interest Communities: Condominiums: Termination

Real Property Law: Financing: Mortgages & Other Security Instruments: Foreclosures: General Overview

Real Property Law: Common Interest Communities: Condominiums: Termination

Condominium association was empowered to tax the phantom units, and to foreclose on the tax sale certificate after the taxes were unpaid, but its right to remove the phantom units required the unanimous consent of the unit owners. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

Real Property Law: Financing: Mortgages & Other Security Instruments: Foreclosures: General Overview

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Condominium association was empowered to tax the phantom units, and to foreclose on the tax sale certificate after the taxes were unpaid, but its right to remove the phantom units required the unanimous consent of the unit owners. *Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 (App.Div. 2015)*.

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N.J. Stat. § 46:8B-28

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§ 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.

History

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

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N.J. Stat. § 46:8B-29

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§ 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.

History

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

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Real Property Law: Common Interest Communities: Condominiums: General Overview

Real Property Law: Subdivisions: General Overview

Real Property Law: Zoning & Land Use: General Overview

Real Property Law: Common Interest Communities: Condominiums: General Overview

Where campground property after being transferred to a new owner was converted to condominiums upon the filing of a master deed, no requirement for subdivision approval could be imposed, because N.J. Stat. Ann. § *46:8B-29*

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prohibited condominium property discrimination due to such change. *Twp. of Upper v. Oak Ridge Corp., 188 N.J. Super. 367, 457 A.2d 844, 1983 N.J. Super. LEXIS 785 (Ch.Div. 1983)*.

Real Property Law: Subdivisions: General Overview

Where campground property after being transferred to a new owner was converted to condominiums upon the filing of a master deed, no requirement for subdivision approval could be imposed, because N.J. Stat. Ann. § *46:8B-29* prohibited condominium property discrimination due to such change. *Twp. of Upper v. Oak Ridge Corp., 188 N.J. Super. 367, 457 A.2d 844, 1983 N.J. Super. LEXIS 785 (Ch.Div. 1983)*.

Real Property Law: Zoning & Land Use: General Overview

Under N.J. Stat. Ann. §§ *46:8B-29*, *40:55D-58*, municipalities are prohibited from enacting discriminatory zoning ordinances based upon form of ownership. *Hampshire House Sponsor Corp. v. Ft. Lee, 172 N.J. Super. 426, 412 A.2d 816, 1979 N.J. Super. LEXIS 1023 (Law Div. 1979)*.

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N.J. Stat. § 46:8B-30

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§ 46:8B-30. Partial invalidity

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

History

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

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N.J. Stat. § 46:8B-31

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§ 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.

History

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

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N.J. Stat. § 46:8B-32

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§ 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.

History

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

Annotations

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Real Property Law: Landlord & Tenant: Lease Agreements: Residential Leases

N.J. Stat. Ann. § *46:8B-32* was limited to leases made between developers and owners' associations that were not controlled by the unit owners; it did not apply where the association was completely controlled by the unit owners. *Thanasoulis v. Winston Tower 200 Asso., 214 N.J. Super. 408, 519 A.2d 911, 1986 N.J. Super. LEXIS 1549 (App.Div. 1986)*, rev'd, *110 N.J. 650, 542 A.2d 900, 1988 N.J. LEXIS 65 (N.J. 1988)*.

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N.J. Stat. § 46:8B-33

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§ 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.

History

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

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N.J. Stat. § 46:8B-34

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 375 (except c. 363, 366-368), and J.R. 22

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§ 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.

History

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

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N.J. Stat. § 46:8B-35

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§ 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.

History

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

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N.J. Stat. § 46:8B-36

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§ 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.

History

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

Annotations

LexisNexis® Notes

Case Notes

Constitutional Law: Congressional Duties & Powers: Contracts Clause: General Overview

Real Property Law: Common Interest Communities: Condominiums: General Overview

Constitutional Law: Congressional Duties & Powers: Contracts Clause: General Overview

N.J. Stat. Ann. § *46:8B-36*, which created a rebuttable presumption that all clauses in new condominium master deeds and bylaws providing that the developer had a right of first refusal were unconscionable, was not unconstitutional under the impairment of contracts provision of N.J. Const. art. IV, § *VII, para. 3*. *Berkley Condominium Asso. v. Berkley Condominium Residences, Inc., 185 N.J. Super. 313, 448 A.2d 510, 1982 N.J. Super. LEXIS 852 (Ch.Div. 1982)*.

Official version to be obtained from LexisNexis. www.lexis.com

Real Property Law: Common Interest Communities: Condominiums: General Overview

N.J. Stat. Ann. § *46:8B-36*, which created a rebuttable presumption that all clauses in new condominium master deeds and bylaws providing that the developer had a right of first refusal were unconscionable, was not unconstitutional under the impairment of contracts provision of N.J. Const. art. IV, § *VII, para. 3*. *Berkley Condominium Asso. v. Berkley Condominium Residences, Inc., 185 N.J. Super. 313, 448 A.2d 510, 1982 N.J. Super. LEXIS 852 (Ch.Div. 1982)*.

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N.J. Stat. § 46:8B-37

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§ 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.

History

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

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N.J. Stat. § 46:8B-38

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§ 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.

History

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

Annotations

Research References & Practice Aids

NJ ICLE:

Commercial Real Estate Transactions in New Jersey 7.5 Structure of the Condominium

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