

STATE OF NEW YORK

9865--A

IN SENATE

June 7, 2024

Introduced by Sen. MATTERA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law, in relation to transition of control of certain homeowners' associations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The real property law is amended by adding a new article 16
2 to read as follows:

ARTICLE 16

TRANSITION TO HOMEOWNERS' ASSOCIATION CONTROL

Section 500. Transition to homeowners' association control.

501. Definitions.

7 § 500. Transition to homeowners' association control. 1. Homeowners,
8 other than the real estate developer of a residential housing community
9 are entitled to elect at least a majority of the members of the board of
10 directors of the homeowners' association when the earlier of the follow-
11 ing events occurs:

12 (a) three months after ninety percent of the parcels in all phases of
13 the residential housing community that will ultimately be operated by
14 the homeowners' association have been conveyed to members other than the
15 developer;

16 (b) such other percentage of the parcels has been conveyed to members,
17 or such other date or event has occurred, as is set forth in the arti-
18 cles of incorporation and bylaws of the homeowners' association in order
19 to comply with the requirements of any governmentally chartered entity
20 with regard to the mortgage financing of parcels;

21 (c) upon the developer abandoning or deserting its responsibility to
22 maintain and complete the amenities or infrastructure as disclosed in
23 the articles of incorporation and bylaws of the homeowners' association.
24 There is a rebuttable presumption that the developer has abandoned and
25 deserted the property if the developer has unpaid assessments or guaran-
26 teed amounts a period of more than two years;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (d) upon the developer filing a petition seeking protection under
2 chapter seven of the federal bankruptcy code;

3 (e) upon the developer losing title to the property through a foreclo-
4 sure action or the transfer of a deed in lieu of foreclosure, unless the
5 successor owner has accepted an assignment of developer rights and
6 responsibilities first arising after the date of such assignment; or

7 (f) upon a receiver for the developer being appointed by a circuit
8 court and not being discharged within thirty days after such appoint-
9 ment, unless the court determines within thirty days after such appoint-
10 ment that transfer of control would be detrimental to the association or
11 its members.

12 2. (a) Members of a homeowners' association, other than the developer,
13 are entitled to elect at least one member of the board of directors of
14 the homeowners' association if fifty percent of the parcels in all phas-
15 es of the residential housing community which will ultimately be oper-
16 ated by the association have been conveyed to members other than the
17 developer. For purposes of this section, the term "members other than
18 the developer" shall not include builders, contractors, or others who
19 purchase a parcel for the purpose of constructing improvements thereon
20 for resale.

21 (b) The developer is entitled to elect at least one member of the
22 board of directors of the homeowners' association as long as the devel-
23 oper holds for sale in the ordinary course of business at least five
24 percent of the parcels in all phases of the residential housing communi-
25 ty. After the developer relinquishes control of the homeowners' associ-
26 ation, the developer may exercise the right to vote any developer-owned
27 voting interests in the same manner as any other member, except for
28 purposes of reacquiring control of the homeowners' association or
29 selecting the majority of the members of the board of directors.

30 3. At the time the members are entitled to elect at least a majority
31 of the board of directors of the homeowners' association, the developer
32 shall, at the developer's expense, within no more than ninety days
33 deliver the following documents to the board:

34 (a) All deeds to common property owned by the association;

35 (b) The original of the association's declarations of covenants and
36 restrictions;

37 (c) A certified copy of the articles of incorporation of the associ-
38 ation;

39 (d) A copy of the bylaws;

40 (e) The minute books, including all minutes;

41 (f) The books and records of the association;

42 (g) Policies, rules, and regulations, if any, which have been adopted;

43 (h) Resignations of directors who are required to resign because the
44 developer is required to relinquish control of the association;

45 (i) The financial records of the association from the date of incorpo-
46 ration through the date of turnover;

47 (j) All association funds and control thereof;

48 (k) All tangible property of the association;

49 (l) A copy of all contracts which may be in force with the association
50 as one of the parties;

51 (m) A list of the names and addresses and telephone numbers of all
52 contractors, subcontractors, or others in the current employ of the
53 association;

54 (n) Any and all insurance policies in effect;

55 (o) Any permits issued to the association by governmental entities;

56 (p) Any and all warranties in effect;

1 (q) A roster of current homeowners and their addresses and telephone
2 numbers and section and lot numbers;

3 (r) Employment and service contracts in effect;

4 (s) All other contracts in effect to which the association is a party;
5 and

6 (t) The financial records, including financial statements of the asso-
7 ciation, and source documents from the incorporation of the association
8 through the date of turnover. The records shall be audited by an inde-
9 pendent certified public accountant for the period from the incorpo-
10 ration of the association or from the period covered by the last audit,
11 if an audit has been performed for each fiscal year since incorporation.
12 All financial statements shall be prepared in accordance with generally
13 accepted accounting principles and shall be audited in accordance with
14 generally accepted auditing standards. The certified public accountant
15 performing the audit shall examine to the extent necessary supporting
16 documents and records, including the cash disbursements and related paid
17 invoices to determine if expenditures were for association purposes and
18 the billings, cash receipts, and related records of the association to
19 determine that the developer was charged and paid the proper amounts of
20 assessments.

21 § 501. Definitions. For the purposes of this article:

22 1. "Residential housing community" means the real property that is or
23 will be subject to a declaration of covenants which is recorded in the
24 county where the property is located. The term "residential housing
25 community" includes all real property, including undeveloped phases,
26 that is or was the subject of a development-of-regional-impact develop-
27 ment order, together with any approved modification thereto.

28 2. "Developer" means a person or entity that:

29 (a) creates the residential housing community served by the associ-
30 ation; or

31 (b) succeeds to the rights and liabilities of the person or entity
32 that created the residential housing community served by the associ-
33 ation, provided that such is evidenced in writing.

34 3. "Homeowners' association" or "association" means a New York corpo-
35 ration responsible for the operation of a residential housing community
36 or a mobile home subdivision in which the voting membership is made up
37 of parcel owners or their agents, or a combination thereof, and in which
38 membership is a mandatory condition of parcel ownership, and which is
39 authorized to impose assessments that, if unpaid, may become a lien on
40 the parcel. The term "homeowners' association" does not include a commu-
41 nity development district or other similar special taxing district
42 created pursuant to statute.

43 § 2. This act shall take effect on the sixtieth day after it shall
44 have become a law.