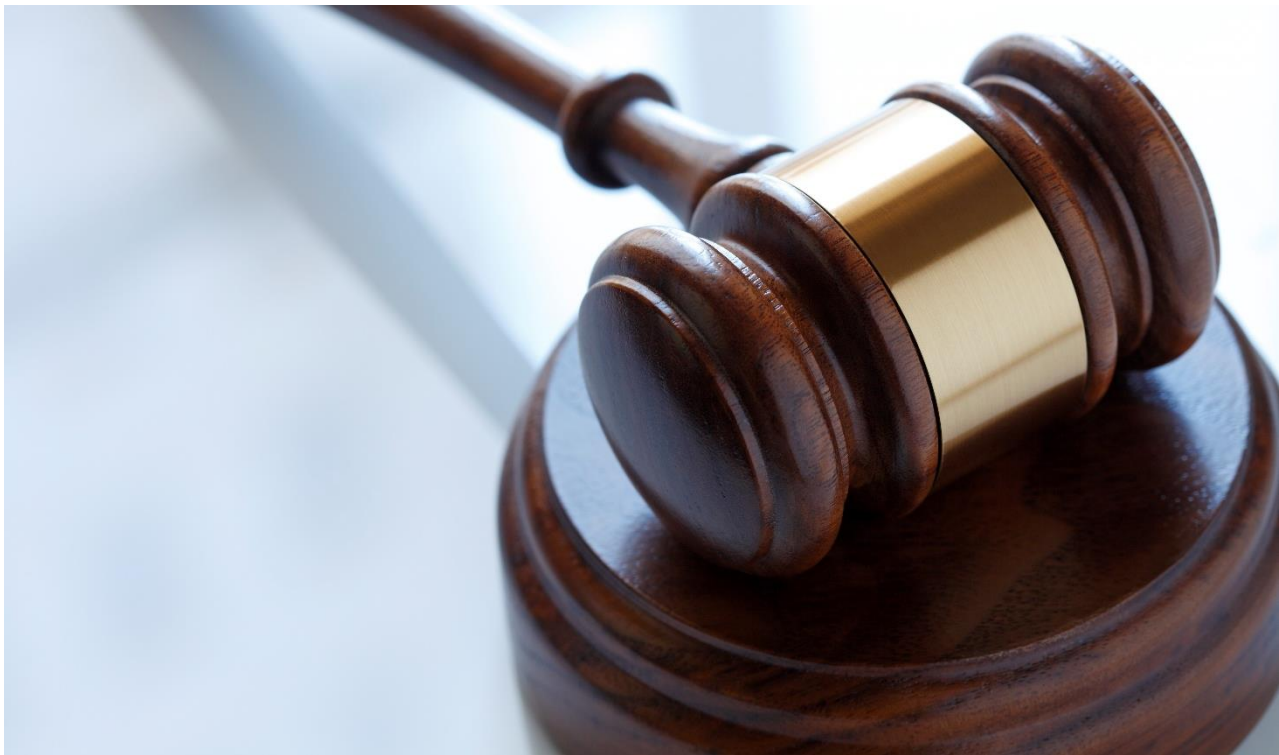




Challenging Unfair Board and Management Actions

THIS ISSUE PROVIDES A NUMBER OF TIPS AND INSIGHTS THAT CAN HELP YOU DEFEND YOUR RIGHTS AS COMMON-INTEREST COMMUNITY HOMEOWNERS



IN DEPTH

A BRIEF HISTORY OF OPEN MEETINGS

The road to association decision-making transparency has been a long one, but laws are now in place to help ensure the flow of essential information.

Read the story on page 5.

STRATEGIES

WHEN ADR GOES TO COURT

Do you need to arbitrate your issue with the board. You can do that, but don't get stuck paying more than you should. Here are some tips.

Read the story on page 4.

PRO TIPS

ASSOCIATION FINES

Association fines can ruin a homeowner's finances. That's why you need to be aware of these key facts about what your association can and can't do.

Read the story on page 3.

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President's Message



When I started dealing with community problems in 1996, I soon realized that one major cause was that associations lacked crucial elements we relied on to preserve democracy in our federal body politic. The founders provided our government with built-in checks and balances by having three independent co-equal branches, along with a guarantee of free speech and a free press.

Owner-controlled associations, on the other hand, had virtually none of the things found in what we think of as government. All power is concentrated in the board. Associations lack any legislative type of body and independent judicial body. There is no free press as a watchdog to board actions. That makes it extremely difficult for an owner to confront the board about improper or undesirable actions. (This was especially true before the 2017 election law provided many effective requirements and procedures.)

Those upset about board abuses of power will be able to see the same types of problems in our federal system, as all the checks, balances, safeguards and norms have been compromised for the first time in our history. Just as many associations are subject to centralized authority in the board president, that appears to be our new federal model. The good news for association members is that, unlike in our federal system, they have a means to redress the abuses.

Under NJAC 5:26-8.9 owners have regulations that the State can enforce to compel open and fair elections. Even more important, and in line with the British model, owners at any time can have what is effectively a vote of no confidence. NJAC 5:26-8.11 (d) allows owners to remove board members with a 51 percent petition. That would be followed by an election to replace members.

Democracy only works reliably either when power is divided or voters can act at any time to redress problems from non-responsive or abusive rulers. The founders realized the crucial nature of communication in a democracy, and therefore

specifically protected a free press. Although the board controls newsletters or the association web site, it is easy for owners to create their own web page to be a place for discussion and act as a watchdog over the board. Just be sure to distinguish it from any official association communication, or be sure to include a disclaimer that it is not the official assoc. communication

Association owners also can look to the State to impose democracy from above. (Unfortunately, human nature being what it is, few other owners care when a board singles out one individual owner for unfair treatment. For that reason, I advise organizers to find issues that affect and can unite other owners.)

Perhaps the biggest advantage we have with associations is that we can impress on legislators the need for improvements in the law to protect owners' rights. Thus, C-IHC advocates revision of matters such as the current ADR system, in which the board makes all the decisions about its members and procedures. The law must provide more detailed ADR procedures and prohibit allowing boards from simply removing ADR members who disagree with them. The law can eliminate or severely curtail board control of ADR so that it is truly impartial when there are challenges to board actions or inactions. It can eliminate the ability of boards to simply ignore ADR outcomes favorable to an owner.

Although it is impractical for many associations to have a legislative type entity, the law (see NJAC5:26-8.13) allows owners to petition for bylaw changes. Most importantly, it allows 10 percent of owners to block unilateral board proposed bylaw amendments.

If all else fails, owners ultimately have access to an impartial court system-with judges not chosen by or loyal to the board.

In this past national election, millions of eligible voters failed to vote. Owners report the same levels of voter apathy in their association elections – as well as often not having an insufficient number of candidates. The only cure for that is education about why voting (and candidacy) is crucial in any democratic system, and for all of us to cast our ballots!

-Ed Hannaman President, C-IHC

A Fine Note (What You Need to Know About Association Fines)

Nobody likes to be fined by their association. But what are your rights? New Jersey law conditions an association's power to impose fines on having that power authorized in the master deed or bylaws. You can be fairly certain your governing documents contain this authorization, but it is always important to check. You should also discover if the fines authorized exceed what the law permits.

For a fine to be valid, the unit owner must receive written notice of the basis for the fine and be informed of the right to request alternate dispute resolution (ADR). The law does not specify who must provide this notice, but in most cases it will be a property manager if one exists. Technically, because the board should be deciding on fines, it should be the entity issuing the notice, but it's probably not worth arguing as long as there is a board. (See our Summer Newsletter about limits on property manager authority).

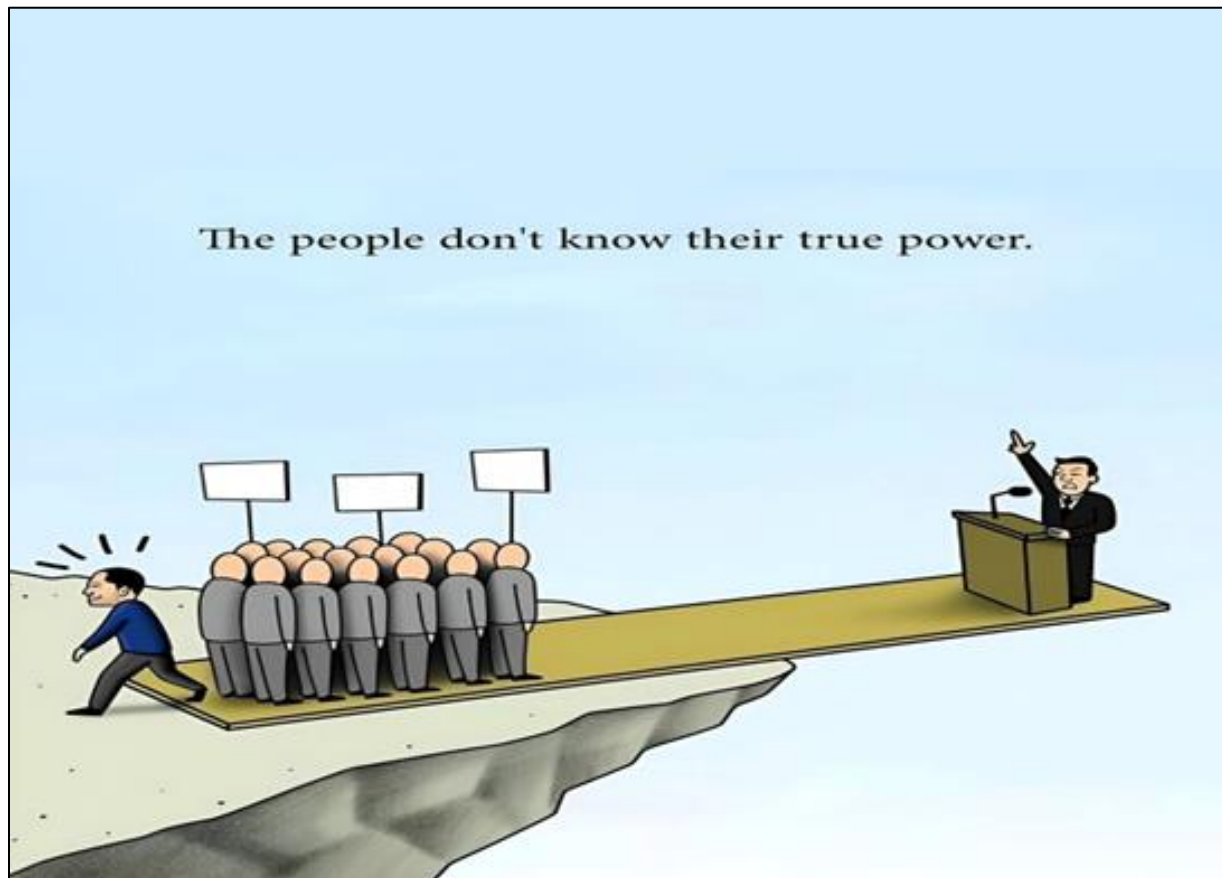
Although not specifically stated in the law, due process and fundamental fairness support the suspension of any interest, late fees or daily fines until the ADR outcome (if unfavorable to the owner). This is only fair inasmuch as the association is in control of the ADR proceeding and can schedule it promptly to avoid any undue delay. Naturally, you should cooperate by being available and only request delays for serious reasons such as illness, work or family obligations.

The law bases the amount of the fines on what the State is authorized to impose under the Hotel and Multiple Dwellings Law. That permits fines of \$5 to \$500 per violation and permits daily fines (NJSA 55:13A-19). If the association imposes daily fines or other charges while it leisurely pursues setting up the ADR, you should object to the unfairness. In addition, you may wish to pay under protest simply to stop the running up of a bill. In such case, if you dispute the basis or amount, you should continue to insist on being provided with ADR. Sometimes, the association will fail to provide adequate notice or any notice at all that a fine was imposed. In such case, the fine is invalid and you may consider suing in small claims court for the return of monies paid.

Thank You for Getting in Touch!

C-IHC appreciates learning of the problems and abuses owners are facing. These assist in focusing our attention on remedies. We offer individuals general guidance and information.

Our goal is to remain focused on the big picture; specifically, protecting the rights of all common-interest homeowners through education, changes to laws and improved enforcement. Please remember that we are an all-volunteer organization. Therefore, we are not able to respond quickly to specific time-sensitive issues such as those involving an imminent election or an ADR. Thank you for understanding that while we appreciate learning of an issue, we may not always be able to respond in the time you desire.



When You Go to Court: More Thoughts on ADR

If you are suing your association in small claims court (or any court for that matter) and the court dismisses the case without prejudice (or otherwise), or simply adjourns and remands it to proceed first in association ADR, it will issue a formal order. Sometimes the judge will state in the order that the parties will share the cost of ADR. That might look fair to the judge, and it may be in most cases – just not in those involving associations.

It is important to respectfully inform the court that the law requires associations to provide ADR as a common expense. This is especially important to insist on if the governing docs provide for hiring an ADR provider or using AAA (The American Arbitration Association) as a means of providing ADR. (This is often the case because it is an easy out for the initial governing document drafter rather than crafting one that is tailored to the association and economical.) AAA is designed for parties with a lot at stake, including very large sums of money. Thus, the minimum cost of about \$3,500 (because

of registration fees to each party and then for case initiation and processing and then the potentially hundreds of hours per day for one arbiter does not seem excessive- especially when balanced against the costs of a complex lawsuit. However, if you have a few hundred dollars at stake, you've spent over \$1,700 just to have your matter considered.

There is a good reason the law makes ADR a common expense: the association decides on the procedure.

Associations that fail to change governing documents providing for AAA as the means to provide ADR must be willing to absorb the significant costs. There are many much cheaper-even free alternatives.

Note: If you've already had an association ADR when the court orders one, you may wish to emphasize that a 50-50 cost split for ADR costs is not equitable, especially if you were successful at the association level and the Board rejected the ADR outcome.

A Brief History: Open Meetings

by Ed Hannaman, C-IHC President

In 2017 New Jersey enacted an election law (effective November 1 of that year for associations recognizing that they exercise governance over owners and must adhere to American democratic values (NJSA 45:22A-45.1 et seq.). The New Jersey Condominium Act, NJSA 46:8B-13(a) and Planned Real Estate Development Full Disclosure Act, NJSA 45:22A-45a) recognized that associations need to have meetings open to owners. How do these impact the principal of voting at open meetings. Without open voting, an open meeting is ineffective for providing transparency when there are matters that merit a board's discussion in closed sessions. Without open voting, there is no notice of actions taken to owners and no minutes of the actions available to owners. An open meeting without full open voting is a superficial exercise that merely serves to cover up corrupt actions.

For over 28 years, the New Jersey's Bureau of Homeowner Protection of the Department of Community Affairs (DCA) held that the statutory authorization for boards to deal with specified matters in closed meetings did not authorize boards to ignore the obligation to vote on such matters in an open meeting. The law was clear that to be "binding," a vote had to be taken at an open meeting. The agency's position was straightforward that this applied to voting on matters that a board could discuss in closed/executive session.

Notably, there is no necessity to disclose any confidential information at the open meeting when voting, and the agency acknowledged that on such matters as litigation the vote may need to be delayed until after the action to avoid alerting adversaries. (Experience has shown that even many months after filings that are public record, associations have failed to inform owners of the action.)

In 2020 the DCA enacted regulations in response to the election law and incorporated existing open meeting regulations (which had been located in a Code Section, NJAC 5:20, not part of the PREDFDA Reg., NJAC 5:26). When it did so, it also formalized the long-standing open voting requirement. The Agency's Regulations (NJAC 5:26-8.12(e)2) expressly stated that *a vote in a closed session (to which owners are not admitted) could not be binding*. Thus, the board would have to both vote at an open meeting and reflect the vote in its meeting minutes.

The Community Association Institute (CAI) brought a case challenging many of the owner protections in the regulations, including specifically the necessity of an open vote in all cases. It argued that a board need not vote at an open meeting on any matters the PREDFDA permitted to be dealt with in a closed session. In February 2024, the Appellate Court parsed statutory language to assume that the legislature made a conscious decision to distinguish a closed conference or working session, in which the board "discusses" matters from a non-open session in which it "dealt with" matters.

The open meeting statute allows several specific matters such as contract negotiations, personnel matters or legal issues to be dealt with in an executive session. The court decided that the phrase "deal with" allowed a private vote although that eliminated all the benefits of requiring open meetings by creating a loophole that allows the exceptions to swallow the rule. (In the Matter of the Challenge of the Community Associations Institute-New Jersey Chapter, Inc., to Amendments to N.J.A.C. 5:26 App Div. Feb 23, 2024, Doc No A-2241-21 (as of September 30 the Committee on Publications had not approved its publication making it a reported case establishing precedent-highly unusual considering that it reversed State Regulations. It remains an unpublished decision.) That decision steamrolled over established judicial precedent that courts will defer to the position of an Executive agency charged with administering the law. Similarly, the court ignored legislative intent to provide openness for board actions and the fact that legislators saw no distinction between "discussing" and dealing with" in the context of closed meetings.

Continue reading on the C-IHC website at www.c-ihc.org/resources.

Q&A: Your Most Common Questions...and Our Answers

First in an ongoing series

Q: I suspect that our board is not spending our money properly. What can be done?

A: As an owner in a common-interest community you have the right to inspect financial records as specified under the New Jersey Condo Act (N.J.S.A. 46:8B-16(d) It requires condominium associations to maintain accounting records, “in accordance with generally accepted accounting principles [GAAP], open to inspection at reasonable times by unit owners.” According to the Condominium Act, such records include “(i) a record of all receipts and expenditures and (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.” The New Jersey Department of Community Affairs (DCA) takes the position that the right of inspection includes the right to copies of those documents. Thus, it recommends that associations allow members (homeowners) to make copies of financial records that are required to be open to inspection. And, unless your Bylaws provide otherwise, the association may charge the cost for the copying if they make them, but cannot charge you if you do the copying yourself.

Make your request for financial information by letter to the board, copying the association manager (if there is one).

That said, the board has the power to determine the budget each year, though

voting on such a budget must take place at a meeting open to all owners. They also can decide to take loans or a mortgage, as long as there are no restrictions on that sort of action in the association bylaws.

State law requires open nomination and elections for association boards. If you don't like the way things are being run in your community, we suggest that you nominate people you trust for the next board election and rally fellow owners to vote for them. Whatever the issue, it's always good for owners to band together, publish a newsletter, attend the meetings, and alert the local media. Organizing your neighbors can be very powerful.

Q: Our board recorded our fall association meeting. I have requested twice via email the copy of the recorded transcript. No reply. Is the recorded transcript from the meeting considered a part of the meeting minutes? Should they be fulfilling my request of the transcript?

A: Your board should provide meeting minutes on request within a reasonable time period. Whether or not they have to provide a transcript is more of a grey area that can be up to the discretion of the board and your community's governing documents. You should always check your governing documents to see what additional rights you may have. If the association uses a recording *as* the minutes, then you are entitled to receive that recording.

New Jersey Legislature: Legislation to Watch Fall-Winter 2024

Compiled by Joyce Murray, C-IHC Board

Legend: A = Bill in the Assembly S = Bill in the Senate

Y = C-IHC supports; Q = C-IHC supports with amendments; O = C-IHC opposes

PA = passed Assembly PS = passed Senate PBH = passed both houses. Pamphlet Law = enacted

If there is no designation, C-IHC has not taken a position on the legislation

[A476](#) **Asm. Danielson/Wimberly**

C-IHC = Q

Provides standards for election and recall of officers for associations of planned real estate developments and restricts certain expenditures.

[A637](#) **Asm. Kean**

C-IHC = Y

Prohibits conflict of interests by governing board members or management employees of homeowners' associations.

[A691/S595](#) **Asm. Torrisi/ Sen. Tiver**

C-IHC = Y

Restricts occupancy of dwelling unit in age-restricted community to older adults following resale.

[A746/S503](#) **Asm. McGuckin/Kanitra; Sen. Holzapfel**

Requires installation of emergency power supply systems to certain common areas of new planned real estate developments; provides related tax incentives.

[A819](#) [S450](#) **Asmn. McGuckin, Kanitra; Sen. Holzapfel**

C-IHC = Y

Requires mortgage lenders to maintain vacant, age-restricted dwelling units during foreclosure.

[A1006](#) **Asw. Munoz**

C-IHC = Y

Requires certain common interest community associations to publish certain information; requires that homeowners' association contracts for management and maintenance include 24-hour emergency services. (Note: BILL permits attys fees for owners if they need to sue for access to records and win.)

[A1312](#) **Asm. DePhillips**

C-IHC = Y

Requires personnel at gated communities and multi-unit complexes to allow service of process.

[A1367](#) **Asm. Marengo**

C-IHC = O

Revises time period at which unit owners assume control of homeowners' associations. (Note: opposition due to the fact that the bill appears to create separate associations, by building section)

[A2208](#) **Asw. McCann Stamato, Asm. Sampson**

C-IHC = Y

Extends time period for tenants receiving federal housing choice voucher program assistance to locate new housing after landlord sells property. (Note: NJ and Federal laws allow vouchers to be converted to imputed income to purchase COAH units.)

[A2271](#) **Asw. Lopez**

C-IHC = Y

Requires association of age-restricted common interest community to permit dwelling owner to transfer property without regard to age of buyer. Note: this is actually the state of the law now, but needs to be spelled out to many associations.

[A2449](#) **Asw. Quijano**

C-IHC = Q

Requires training of planned real estate development association board members.

[A2450](#) **Asw. Quijano**

C-IHC = Q

Requires licensure of community management entity that contracts to conduct management services for planned real estate development association.

A2480/[S3121](#) **Asw. Quijano; Sen. Greenstein**
C-IHC = Y

Requires certain local authorities to inspect, maintain, and repair fire hydrants in planned real estate developments.

[A2554](#) **Asm. Peterson**
C-IHC = Y

Clarifies DCA's authority to ensure planned real estate development builders comply with disclosure requirements.

[A2558](#) **Asm. Peterson**
C-IHC = Y

Requires developer under "The Planned Real Estate Full Disclosure Act" to post bond with DCA and provides for more accountability to owners in common interest community.

[A3438](#) **Asmm. Wimberly, Reynolds-Jackson**
C-IHC = Y

Creates program for installing standby emergency power generators in new senior housing.

[A3467](#) **Asw. Murphy**
C-IHC = Q

Expands DCA oversight over common interest communities; establishes trust fund, advisory council, and ombudsman office.

[A3472](#) **Asw. Murphy**
C-IHC = Q

Establishes "Common Interest Community Task Force."

Note: Bill does not require member of task force that represents solely owner interests

A3919/[S686](#) **Sen. Singer/Asmn. Rumph, Myhre**
C-IHC = Y

Prohibits common interest communities from penalizing members who place unit into living,

revocable trust fund or classifying placement as title transfer.

[A4779](#) **Sauickie, Alex**
C-IHC = Y

Provides gross income tax credits for portion of homeowners' association payments used to fund infrastructure improvements within common interest communities.

[S762](#) **Sen. Johnson**
C-IHC = Q

Establishes penalty on planned real estate development association for failure to provide association members timely access to certain meeting minutes. (Note: the penalty would payable by the members, not the board).

[S1013](#) **Sen. Greenstein**
C-IHC = Y

Prohibits condominium associations from assessing insurance deductibles to individual unit owners or groups of unit owners.

[S1524](#) **Sen. Turner**
C-IHC = Q

The "Owners' Rights and Obligations in Shared Ownership Communities Act."

[S1776](#) **Sen. McKnight**
C-IHC = Y

Clarifies and expands landlord registration procedures; creates certain rights for tenants; makes certain changes concerning tenant notifications, inspections, and maintenance in multiple dwellings; permits percentage of affordable housing obligation to be satisfied by certain rehabilitation projects.

[S2907](#) **Sen. Greenstein**
C-IHC = Y

Concerns installation and maintenance of solar panels in common interest communities.

Find more resources and support us through our website at www.c-ihc.org.
Join the conversation on our [Facebook page](#).

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