

Legal Issues Update



**NEW JERSEY COALITION OF
LAKE ASSOCIATIONS**

JUNE 10, 2017

Existing Statutes



- “N.J. Non-Profit Corporation Act” N.J.S.A. 15A: 1-1, et seq.
- “Planned Real Estate Development Full Disclosure Act” N.J.S.A. 45:22A-21 et seq. (PREDFDA-but only the 1993 amendments, not the full Act)
- N.J. Administrative Code 5:20-1.2
- Safe Dam Act N.J.S.A. (the "SDA"), N.J.S.A. 58:4-1 to -14

N.J. Non-Profit Corporation Act



- Provides general purposes and authority
- Provides governance framework
- Includes some mandatory sections: requirement for by-laws; registered agent; voting list requirements; inspectors
- Provides default sections for issues not addressed in By-Laws (quorum, meetings, voting,)
- Provides for indemnification of trustees

PREFDA



- If the association was formed before 1979, only the amendments are applicable to the lake (see Twin Rivers case)
- Requires Alternate Dispute Resolution Policy
- Requires that Board meetings be open to all members, unless executive session

Alternate Dispute Resolution



- Must have a policy pursuant to PREDFDA 45:22A-44(b)
- “fair and efficient procedure for the resolution of disputes” between members and the association, or between members, which is available as an “alternate to litigation.”
- Department of Community Affairs position

Board Meetings



- Must include provision that all Board meetings be open to all members (unless executive session or work session where no vote is taken)
- Meetings may be closed/in executive session if: (1) discussion of confidential information; (2) litigation or contract negotiations; (3) attorney client privilege; (4) employee issues discussed (PREDFDA)

Proposed Legislation



- A4048/S2574 Imposes sales and use tax, transient accommodation fee, and authorizes local transient accommodation tax on charges for providing space for accommodation of transient guests in certain residences in this State.
- A4441/S3119 Imposes sales and use tax, transient accommodation fee, and authorizes local transient accommodation tax on charges for providing space for accommodation of transient guests in certain residences in this State.
- A1311/S1158 Fishing licenses-this bill would specify that a fishing license is not required in order for a resident of a private community, or the authorized guests to take fish from a private community lake in the resident's community.
- A3813/S2190 Establishes Office of Common Interest Community Association Ombudsman.
- www.njleg.state.nj.us

Dam related cases



- New Jersey Department of Environmental Protection v. Mercer County Soil Conservation District no longer applicable
- New Jersey Department of Environmental Protection v. Alloway Township
- New Jersey et al. v. Gloucester County et al., case number A-2327-11T3, New Jersey et al. v. Duffield et al., case number A-5095-11T3, and New Jersey et al. v. Gloucester County et al., case numbers A-0558-12T3 and A-0625-12T3, all in the Superior Court of the State of New Jersey, Appellate Division.
- SDA also imposes significant obligations upon "[a]n owner or person having control of a reservoir or dam." N.J.S.A. 58:4-5(a)

“Fair share” or easement cases



- Island Improvement Association of Upper Greenwood Lake v. Ford, 155 N.J. Super 571 (App. Div. 1978),
- Lake Lookover Property Owners Association v. Olsen, 348 N.J. Super 53 (App. Div. 2002)
- Visconti v. Lake Wallkill Community Inc. Docket No. A-003803-15 T-03
- Aasma et al v. Lake Arrowhead, Docket No. MRS-C-76-15
- Ramapo Mountain Lakes v. Property Owners

Dues and Assessments in Arrears



- Highland Lakes Country Club and Community Association v. Robert Franzino, 186 N.J. 99 (2006).
The Court found that even if a lien for dues in arrears is extinguished by virtue of a foreclosure, it does not affect the underlying debt. Any party who takes title subsequent to the foreclosure takes with notice of the obligation to pay dues and assessments in arrears.

Foreclosures



- Review Association's By-Laws to make sure it has the language: Membership privileges will not be extended to new purchasers on transfer unless all dues and assessments in arrears are brought current.
- Send correspondence to foreclosing attorney when you are served in a foreclosure, citing the By-Law and supporting case law.

Foreclosures



- NJSA 40:48-2.12s-2014 legislation which authorizes NJ municipalities to adopt ordinances that require foreclosing lenders to maintain the exterior of vacant homes up to local codes, or face stiff fines.

Best Practices



- Know your restrictions of record
- Operate in compliance with By-Laws
- Update your Rules and Regulations
- Business Judgment rule: Courts will not overturn the decision of a Board unless it is (1) unauthorized or (2) fraudulent, self-dealing or unconscionable
- Formalize your procedures
- Rely on your professionals

Use of Resolutions



- Confirms action of the Board
- Recite the authority under which the action is permitted
- Recite due diligence Board has taken for interest of community (facts investigation, options considered, advice of counsel)
- Clear Resolution of action
- Confirmed at regular meeting in the presence of a quorum

Suggested Policies



- Access to records by Members (only required to have membership list, and end of year statement by Non-profit Act, and minutes available by PREDFDA)
- ADR
- Member Hardship
- Late payments and payment plans
- Collections
- Leasing
- Reference to Roberts Rules of Order

Suggested future legal topics



- Collections
- By-Laws
- DEP rules and permitting
- Budget and planning
- Legislative action
- Handling member disputes/municipal court matters

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