



**New Jersey Coalition
of Lake Associations**

a chapter of North American Lake Management Society

The Honorable Phil Murphy
New Jersey Governor
P. O. Box 001
Trenton, NJ 08625

July 1, 2019

Re: Planned Real Estate Development Full Disclosure Act
S3661/ A5043-proposed amendment

Dear Governor Murphy,

I am writing to you as the President of the New Jersey Coalition of Lake Associations, and in opposition to S3661/A5043, which proposes amendments to the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-45.1 ("PREDFDA").

We urge you to veto this Bill, which will have lasting and potentially disastrous impact on many lake associations in New Jersey. Our attempts to review this proposed amendment to the law, which is ill-conceived at best, with Sen. Oroho and Assm. Wirths was unproductive, as they appear to be attempting to appease those who shout the loudest. Assm. Jasey admitted she had no lakes in her district, but had co-sponsored the bill at the request of Assm. Wirths. However, representatives in other districts with lake communities were more willing to hear about the impact to their constituents and did not support the Bill. At this point, all we ask on behalf of our member lakes is a chance to meet with you or your representatives, so that you have a full understanding of what these amendments will do.

History and Mission of NJCOLA: By way of background, the New Jersey Coalition of Lake Associations was formed in 1986 for the purpose of fostering cooperation among member lake associations throughout the State of New Jersey, to provide educational and technical resources to address lake association management and lake ecology issues, and to advocate for member lake associations before legislative bodies. NJCOLA represents over 70 lake associations, including lakes from Sussex County to Cumberland County, and many counties in between. Representatives from member lake associations attend four NJCOLA membership meetings per year, where they obtain valuable information regarding lake management and preservation. Our website provides readily available information at

www.njcola.org.

NJCOLA has a long history of advocacy on behalf of its member associations and their residents. In the 1980s, NJCOLA was instrumental in amending the lifeguard regulations, which negatively impacted its members. In 2000, NJCOLA worked closely with Senator Robert E. Littell and Sen. Anthony Bucco on Senate Bill No. 1714, which appropriated \$135 million to the Department of Environmental Protection for use in dam rehabilitation projects, particularly for small lakes with voluntary membership. In 2006, NJCOLA's representatives testified in the Senate hearings against the Uniform Common Interest Ownership Act and were successful in preventing unfavorable legislation. Today, NJCOLA is actively participating in the reform of the bathing regulations and monitoring several other pending bills.

Voluntary Lake Associations: Many of our member associations were formed in the 1920s-1950s, without the benefit of an enabling statute, like the Condominium Act. Mandatory membership was often not considered important by the developers, as the original owners were frequently looking for a recreational community to escape the city heat for the summer. However, most of these seasonal communities eventually became year-round, with aging facilities, and particularly dams, that needed rehabilitation. Dam rehabilitation continues to be a compelling public policy issue, and amendments to the Dam Loan program already recognize that those who live in lake communities must participate in the rehabilitation of the dam, and the repayment of loans. Without programs such as the Dam Loan program, these private lakes and dams could become the burden of the state, increasing the pressure on an already stressed government.

While many lake association residents (including a large portion of senior residents who have spent many years in the community, but are less likely to use the lake and beaches) recognize the need to contribute for the care and maintenance of the lake and common facilities and to contribute their pro-rated fair share, others did not, so that those participating are disproportionately burdened by community costs. The 2017 PREDFDA amendments changed that.

2017 PREDFDA amendments: Although most lake associations are not subject to the original PREDFDA, they are subject to the PREDFDA amendments. Case law determined that because the 1993 amendments to PREDFDA involved the management and administration of communities, the 1993 amendments applied retroactively to all homeowners' associations, even if the development was constructed prior to the effective date of PREDFDA:

It would be unreasonable to assume that the protections granted to all New Jersey condominium residents and residents of those portions of PREDS constructed after

1977 were not intended to apply to residents of portions of PREDs constructed prior to 1977. Such a literal reading of the Act could result in residents of older homes being given fewer rights regarding community maintenance and administration than their neighbors who may happen to live in a newer home. This court is not willing to find that this is what the Legislature intended when enacting the amendments to PREDFDA. Comm. for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22 (2006),

PREDFDA was amended again on July 13, 2017 ("2017 amendments") confirming that "the rights and protections exist regardless of whether a developer established the community prior to the effective date of PREDFDA." The introduction to the 2017 amendments includes specific language to clarify that "all owners and residents in common interest residential communities with specific rights and protections. These rights and protections exist regardless of whether a developer established the community prior to the effective date of PREDFDA." The amendments specifically provided that the intent was to "establish that all unit owners are members of the association and provide basic election participation rights for certain residents of common interest communities." In a case involving Ramapo Mountain Lakes in Oakland, the court has already determined that the 2017 amendments apply to this formerly voluntary association and requires membership from all who live there.

Cases: The changes to PREDFDA follow a long line of cases involving New Jersey lake associations, which have already established that even in voluntary membership associations, the obligation to pay fees and assessments to a community association is appropriate and fair. The NJ courts have consistently found that the power of an association to raise funds reasonably necessary to carry out the functions of the common interest community will be implied if not expressly granted by the declaration or by statute.

As was recently stated by the Court in Visconti v. Lake Walkkill Community, Inc., Docket No.: A-3803-15T3 (2017), "it is by now well-established that a common interest community can require all of its homeowners to pay an assessment for road maintenance, upkeep of the lake and other amenities the community members have a right to use," Other lake cases include Highland Lakes Country Club and Community Association v. Franzino, 186 N.J. 99, 111 (2006); Lake Lookover Property Owners Association v. Olson, 348 N.J. Super 53, 65-67 (App. Div. 2002); Paulinskill Lake Association v. Emmich, 165 N.J. Super 43, 45-46 (App. Div. 1978); Island Improvement Association of Upper Greenwood Lake v. Ford, 155 N.J. Super 571, 574-575 (App. Div. 1978). Case law supports the authority of a Board of Trustees or other governing body of a lake association to enforce a mandatory fee, even when one has not been

previously enforced. Lake Shawnee Club, Inc. v. Akhtar, Docket No.: A-4717-06, (App. Div. 2008); Unfair Share Lake Arrowhead 2010, Inc. v. Lake Arrowhead Club, Inc., Superior Court-Morris County, Docket No.: MRS-C-43-11.

Until the 2017 PREDFDA amendments clarified that all property owners were members, each lake association was forced to endure the costly process of requiring each property pay their fair share by litigation. The PREDFDA amendments now allow the lake associations to implement mandatory payments, without using community resources to litigate the issue. I think we can all agree that litigation is not only costly to an association, but diverts funds from use within the community. Moreover, it creates conflict and dissent among residents of an otherwise peaceful community.

S3661/A5043 attempts to undo the 2017 PREDFDA amendments and deprive lake associations of these much-needed protections. According to local newspapers, the legislation was apparently introduced at the urging of certain residents, including some *lakefront* residents, who enjoy a well-maintained lake, but were unhappy that they would now be required to pay their fair share. However, many more residents, who faithfully pay their share of maintenance each year, are unfairly burdened by those who refuse to contribute. These residents, too, must have a voice. A quick look at Zillow will show that the benefits of lake association living is touted in each listing in lake communities. It is axiomatic that lakes, dam and common facilities which are maintained benefit the property value of *all* residents, and that all should contribute to that benefit.

Moreover, S3661/A5043 may undermine 30 years of case law and destabilize communities that have already received decisions from the Court regarding the ability to collect maintenance fees from all members.

We were disappointed that NJCOLA was not contacted for comment or input on the proposed bills, and welcome an opportunity to speak with you, at your convenience, regarding this matter. However, until that time, we urge you to veto the proposed amendments.

Very truly yours,

Ernest W. Hofer

Ernest W. Hofer, President
NJ Coalition of Lake Associations