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August 2, 2019

VIA EMAIL Geraldine.callahan@dca.nj.gov
Geraldine Callahan
Department of Community Affairs
PO Box 800
Trenton, New Jersey 08625

Re: Planned Real Estate Development Full Disclosure Act (PRED) Regulations
Proposed Amendments: N.J.A.C. 5:26-1.3, 8.1, 8.2 and 8.4
Proposed New Rules: N.J.A.C. 5:26-8.8 through 8.14
"Radburn Law Regulations"

Dear Ms. Callahan:

This letter is submitted in response to the above-referenced proposed rule amendments and new rules published in the New Jersey Register on June 3, 2019.

Founded in 1978, Hill Wallack LLP is a law firm with offices in Princeton, Cedar Knolls and Red Bank, New Jersey, Yardley, Pennsylvania and New York City. The firm's 14-member Community Association Practice Group provides counsel to hundreds of condominium associations, homeowner associations and housing cooperatives in New Jersey and has done so for decades. We submit these comments on behalf of those associations and their members.

Initially, we acknowledge and support the comprehensive comments submitted on July 16, 2019 on behalf of the Community Associations Institute ("CAI"). In addition, we submit the following:

1. **Public Tallying of Ballots, 5:26-8.9(h)(2).** This provision is substantively beyond the requirements of PRED or the Radburn Law, and it is not reasonably necessary for the enforcement of either statute. In fact, this proposed rule materially conflicts with at least one statutory provision. The Radburn Law specifically authorizes electronic voting. The technology for electronic voting results in vote totals being supplied by the electronic voting company. Thus, it would be impossible to employ the election methodology specifically authorized by the law and comply with this proposed regulatory provision. As more and more associations recognize the convenience, security and cost-savings involved in electronic voting, it can be anticipated that it

will overtake the alternative voting methods in the reasonable future. In addition, the counting of ballots in large-scale communities simply cannot be practically accomplished, for the reasons stated in more detail in the CAI submission. Our suggestion would be to allow each candidate to appoint a representative who would be permitted to observe the counting of paper ballots and to view the tally provided by the electronic voting service provider. In addition, this section's requirement of preservation of paper ballots for 90 days to give a candidate or any other member the right to inspect ballots will more than adequately protect the voting process.

2. **Anonymous Ballots, 5:26-8.9(h)(3)**. The opportunity for electronic voting provides the best alternative for anonymous voting. As stated above, it can be anticipated that electronic voting will become the industry standard in the foreseeable future. In the meantime, the CAI submission clearly and accurately examines the practical difficulties in requiring anonymous paper balloting. In this regard, the differences between voting in governmental elections and corporate elections cannot be overstated.

3. **Master Association Board representation, 5:26-8.9(j).** This proposed rule requires direct election of a Master Association board unless the governing documents of the constituent (sub-) associations provide otherwise. The practical reality is that the bylaws of the Master usually contain the voting provisions. Since the owners are members of both associations, have notice of both sets of governing documents, and agree to be bound by both, the election provision in the Master bylaws cannot and should not be overlooked or ignored.

4. **Requirement that a candidate declare for a specific office and term, 5:26-8.9(l)(iv)(2).** This provision is substantively beyond the requirements of PRED or the Radburn Law, nor is it reasonably necessary for the enforcement of either statute. Different terms are usually available because of a vacant seat. Declaring for a particular seat is cumbersome and can lead to unintended results—for example all candidates running for the longer seat and none running for a shorter seat. This requirement would protect no one and would not serve any of the purposes stated in either law.

5. **Requirement of notification to residents who are not in good standing, 5:26-8.9(l)(1)(v).** The timeline simply does not work with the requirements relating to nominations, notice of the meeting, and inclusion of candidates on the ballot. The notice required by this regulation will be well after the ballots are distributed. Further, since good standing relates only to the payment of assessments, the dispute should be limited to whether or not there are amounts outstanding. Additionally, owners typically receive statements on a regular basis indicating the amounts due, so

this requirement imposes a burden that is generally unnecessary. Therefore, we submit two suggestions. First, a regulation would be appropriate allowing a prospective candidate to inquire as to whether they are in good standing at any time after the call for nominations is sent. The Association should be required to respond with a statement of account within a short time, after which (if the owner is not in good standing) they would be permitted to present proof of payment. Second, the time frames in any bylaw provision on good standing should be permitted to apply to voting; thus, if the requirement is that the owner be in good standing 30 days prior to the election, that provision should control. Again, the owner could request a statement of account and then in a short period provide proof of payment. However, leaving it until 5 days before the election just does not work administratively.

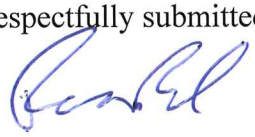
6. **Reservation of Board Seat for Affordable Units, 5:26-8.10 (a)(2).** There is simply no law requiring the reservation of a board seat for affordable units in a housing development. Despite every opportunity for the legislature to have acted on this issue, it has not so acted. To alter the bylaws of every association containing affordable housing in this manner is unwarranted, unsupported by any evidence of need and simply beyond the agency's regulatory authority. A requirement as impactful as this should be the subject of legislative fact-finding and action.

7. **Procedures for removal of board members, 5:26-8.11(d).** This proposed regulation is incomplete and confusing. The subsection begins by recognizing that many association documents contain a removal process. The process generally includes an opportunity for an owner-initiated petition. Is the intent of this section to say: "Notwithstanding any contrary provision of the association's bylaws, a special meeting to remove a board member must be held within 60 days of receipt of a petition signed by 51% of the members in good standing of the association."? As it stands, the subsection simply states that a special election is to be held. The required vote on removal is omitted. Also missing is a requirement that due process be provided to the subject of the removal process, i.e., the opportunity to be heard. We suggest that this section requires reconsideration and redrafting as it is not functional as is.

8. **Voting in Executive Session, 5:26-8.12(e)(2).** This proposed regulation would prohibit decision making in executive session despite the statutory authority in both PRED and the Condominium Act designating four categories of issues that are proper subjects for decision making in executive or closed sessions. Furthermore, it simply makes no sense to discuss a confidential matter in closed session and then reveal the confidential subject in an open meeting vote. For example, if an owner with a disability seeks an assessment payment plan because he or she is out of work and undergoing treatment medical condition, and the board needs to approve it in an open

meeting, the confidentiality of that issue is seriously compromised if not destroyed. The same is true for litigation strategy, for example where the issue is to hire a particular kind of expert. The vote to hire a particular expert can reveal strategy and compromise the interests of an association. There is no justification for making these matters public, and it is not an appropriate answer to hide names or other identifying information. What sense would it make to take a public vote on an assessment payment plan and then refuse to answer questions from the members about the identity of the person or the reason for the accommodation? The privacy of that individual would clearly be compromised by revealing even the existence of an illness or medical condition. The legislature's wisdom in creating appropriate exceptions for consideration and action on confidential matters should not and cannot be contradicted by an administrative regulation.

Respectfully submitted,



Ronald L. Perl
For the firm

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