

FREQUENTLY ASKED QUESTIONS

INTRODUCTION

1. How does the Department handle complaints?

Upon receipt of a fully completed complaint form, agency staff review the documentation submitted in support of the complaint and if it is determined that there is jurisdiction, the agency will compose and send a letter to the board president (as supplied in the complaint form) requesting a response to the allegations made in the complaint. This notice to the board is often not dealt with until the next meeting of the board, or is handed to a property manager or association attorney to prepare a response which is subsequently reviewed by the board prior to submission to the agency. Association boards are typically comprised of volunteers serving without pay that may or may not have professional management services. It is not unreasonable to expect there to be several months between the notice provided and a response received, and often the Department must make one or two follow up inquiries before a response is received. Consequently, it may be several months before the DCA has sufficient information to make any findings or proceed to a resolution of the complaint.

Because penalties are common expenses to be shared by all of the unit owners, the Department reserves the assessment of penalties to only the most egregious situations characterized by a board's unwillingness to either respond to the Department or comply with the requirements of the statutes.

2. Is a complainant's name and address confidential?

Where practical and reasonable, the Department will attempt to maintain the confidentiality of the complainant, but typically complaints contain sufficient detail that the confidentiality of the complainant is not practical. Persons filing complaints with any public agency should recognize that the records of public agencies are generally considered open to the public and discoverable in a court proceeding.

3. What can the State do if I am having a problem with my association?

The Association Regulation unit in the Department of Community Affairs has authority to intervene in three specific areas involving the operation of owner controlled associations. It has the responsibility to ensure that associations enact and properly administer alternate dispute resolution procedures (ADR), comply with open meeting requirements, and provide owners reasonable access to accounting records. Advisory information in the form of handouts are available on the internet at www.state.nj.us/dca under Division of Codes and Standards, Bureau of Homeowner Protection or by calling 609 984-7574. There is no governmental (federal, state, or local) agency that has oversight regarding property management companies, elections or maintenance fee increases.

4. What can the Department do if I am having a problem with the developer?

If you are having a problem with the developer, you may write to the Bureau of Homeowner Protection, Planned Real Estate Development, Post Office Box 805, Trenton, NJ 08625-0805, Attn: Compliance

5. Where can I obtain a copy of the laws and regulations you enforce?

The Association Regulation Units enforces provisions of the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 and the Condominium Act, N.J.S.A. 46:8B-1. You can obtain copies of these laws at www.nileg.state.nj.us under the heading 'Statutes'. Copies of the regulations pursuant to the Planned Real Estate Development Full Disclosure Act, (Title 5 of the Administrative Code) N.J.A.C. 5:26-1 and Meetings of Governing Boards of Associations of Condominium and Other Planned Real Estate Developments N.J.A.C. 5:20-1 et seq. can be found on the internet at www.michie.com/NJ. The regulations may also be found in blue binders at county and State law libraries as well as in some municipalities. This Department does not supply copies of either the statutes or the regulations.

6. When do I file a complaint?

If after reading the handouts, you have a matter within the three areas of jurisdiction, you may file a complaint with this office by filling out a "Common Interest Community Association Complaint" form and sending it, along with the appropriate supporting documentation as listed on the second page of the complaint form, to the Association Regulation unit at the address listed on the form. If you do not have a copy of the "Common Interest Community Association Complaint" form, you may obtain one from the internet at www.state.nj.us/dca under the Division of Codes and Standards, Bureau of Homeowner Protection, or call 609 984-7574 and ask that the form be sent to you.

7. What do I do if I believe my association is acting fraudulently or criminally?

If you suspect fraud you should document the facts and consult a private attorney. This agency has no jurisdiction with regard to fraudulent actions by boards, board members, property managers or association employees. If you suspect criminal acts (such as embezzlement or theft), you should document the facts and consult the county prosecutor's office. Note: the county prosecutor's office will not act on allegations or suspicions not supported by facts.

8. If my question or concern is not among these FAQs, what do I do?

You should carefully read the handouts provided on this site. If your question or concern is not dealt with in the handouts, the Agency does not have jurisdiction in your matter. If the Agency does not have jurisdiction, you may wish to consult with a private attorney about your options.

GENERAL

1. Where can I obtain a copy of my association's by-laws?

You may obtain a copy of your association's by-laws from either the board of your association or from the county clerk's office where your deed was filed. You may be charged a fee for copies.

2. How do I know whether my association is a condominium, homeowner's association, or a cooperative?

If you have a Master Deed allocating you a proportional undivided interest (percentage interest) in common elements and a Unit Deed to your individual unit, you are in a Condominium. If you have sole title to the land on which your home sits and the association holds title to common facilities, (with rare exceptions) you are in a Homeowners' Association. If you have a proprietary lease and no percentage of ownership in common elements, you are in a cooperative.

3. If the association is not responding to my concerns and not meeting its obligations, can I stop paying my maintenance fees?

Absent a court order, if you stop paying your maintenance fees for whatever reason, the association can file a lien on your property. In condominiums, this can be done administratively with no court action. Further, if your association's by-laws permit it, the association can assess you penalties, late fees, and attorney fees on top of the lien. Note that the association need not wait until you sell your home to collect on the lien; they can foreclose and force your home to be sold in order to satisfy the debt to the association.

OPEN MEETINGS

1. What is an open meeting?

An open meeting is a formally announced meeting of the association's governing body (usually called a board of directors) at which the board (as opposed to the owners) takes binding votes.

2. What is a binding vote?

A binding vote is any decision made by the board that obligates the association, usually to a future action such as a contract. Note that if a board improperly hires a contractor or enters into any other agreement, the contractor or the outside party may hold the association responsible for performance. The owners' remedy is to notify the board regarding failure to comply with open meeting requirements and file a complaint with this agency if the board refuses to take corrective action. This agency does not have the authority to nullify the contract. Your alternative would be to proceed to court.

3. How do I find out about open meetings?

For all meetings at which the board is scheduled to take a binding vote, the association must provide owners adequate notice. Adequate notice, pursuant to law, means written notice, at least 48 hours in advance, giving the time, date, location, and, to the extent known, the agenda of the meeting. The notice shall be posted prominently in at least one place on the property that is accessible at all times to all unit owners and must be filed with the person responsible for administering the business office of the association. Your association may provide other means of providing notice, such as the association newspaper or website, electronic mail, etc.

4. How often do open meetings have to be held?

There is nothing in the Condominium Act or Planned Real Estate Development Full Disclosure Act Regulations mandating how often open meetings must be held. Your association bylaws, however, may prescribe otherwise. However, an open meeting must be held when the board wants to take a binding vote on a matter.

5. Can unit owners speak at the open meetings?

Although the law entitles owners to be present, participation by the unit owners in an open meeting is at the discretion of the board unless the by-laws provide otherwise.

6. Does the board have to discuss an issue at the open meeting before it votes?

The law does not require that the board discuss a matter before it votes on it at an open meeting.

7. Can the board exclude unit owners from meetings?

The law allows the board to exclude or restrict attendance at meetings dealing with certain matters, such as litigation, personnel actions, contract negotiations or any matter the disclosure of which would constitute an unwarranted invasion of individual privacy. However, even though the discussion may be private, the formal action must be voted on publicly at a properly noticed open meeting. The board cannot exclude a unit owner from an open meeting because the owner has been determined to be an owner 'not in good standing.'

8. Do minutes have to be taken at open meetings?

The board is responsible for ensuring that minutes are taken at open meetings. If the person responsible for recording the minutes is not available, it is the responsibility of the board to ensure the minutes are taken. It is acceptable for the board to use a recording device to take the minutes.

9. Am I entitled to copies of meeting minutes and how do I obtain a copy of them?

You are entitled to minutes from open meetings. The association is responsible for ensuring copies of minutes of open meetings are available to unit owners prior to the next open meeting. Minutes may be stamped as “Draft” because they are not yet approved until after formal action at a subsequent meeting. Associations are not obligated to mail minutes to owners. There is nothing in the law the Agency enforces that compels the board to provide owners with minutes of executive sessions, annual meetings, or election meetings. However, if the association’s governing documents require that owners be provided with copies of minutes of executive sessions, annual or election meetings and the association does not provide them, the Agency does not have the authority to compel the board to comply with the association’s governing documents.

10. Do I have to pay for meeting minutes?

Copies of current open meeting minutes are a common expense. However, for copies of past minute meetings, you should refer to the association’s governing documents for any records access policies for copying charges. The Agency has no jurisdiction with regards to the payment for copies of minutes of other meetings, such as executive sessions or annual or election meetings.

11. How is the association to provide notice of open meetings?

The provisions of the Condominium Act and Planned Real Estate Development Full Disclosure Act do not require the board to mail meeting notices to owners unless required by your governing documents. Please read the handout on open meetings regarding proper meeting notice. If you believe your board is not complying with the legal requirements regarding adequate notice of meetings, you can fill in the “Common Interest Community Association Complaint” form and send it, along with the appropriate supporting documentation, to the Association Regulation unit. If the association’s governing documents require the board to provide notice other than what is required by law and the board refuses to do so, the Agency does not have the authority to compel the board to comply with the association’s governing documents.

12. Can the board start the open meeting and then adjourn into closed executive session?

There is nothing in the Condominium Act or the Planned Real Estate Development Full Disclosure Act that prohibits a board from doing this. They must reconvene if they are to take a binding vote. If this is a pattern, you may wish to join other owners and petition the board to change its procedure and to have an agenda specifying the order of proceedings.

13. Can the board hold meetings offsite?

Pursuant to N.J.A.C 5:26-8.2(d), all meetings of the association that are required by law to be open to all unit owners shall be held at a location within the development or, if there is no suitable meeting room within the development, at a suitable meeting room either elsewhere in the municipality in which the development is located or in an adjoining municipality. A meeting room shall not be deemed to be suitable if it is not large enough to accommodate a reasonable number of unit owners who might wish to attend an open meeting. If you believe your association is not in compliance with this provision, you can fill in the “Common Interest Community Association Complaint” form and send it, along with the appropriate supporting documentation, to the Association Regulation unit.

14. Does the board have to notify us in advance of a cancellation and re-scheduling of an open meeting?

There are no provisions in the Condominium Act or the Planned Real Estate Development Full Disclosure Act regarding notification for cancellation of meetings. However, if the board wishes to reschedule and will be taking a binding vote, it should follow the provisions in the law regarding notification of an open meeting.

15. Can the board of my association refuse to discuss matters before taking a binding vote at an open meeting?

The law does not require that a board discuss matters at an open meeting. It only requires that the board take a binding vote on the matter at an open meeting.

ALTERNATIVE DISPUTE RESOLUTION

1. What is ADR?

ADR, or alternative dispute resolution, is a written procedure that an association is legally required to have in place to resolve disputes either between owners or between owners and the board. It is required to provide owners with an alternative to litigation.

2. How do I obtain a copy of the association’s ADR procedure and request to participate in one?

You should direct your request for a copy of your association’s ADR procedure to the board. The Agency does not maintain copies of ADR procedures as the law does not require associations to file them with us. You should direct your request to participate in an ADR procedure to whatever entity the procedure requires or in the absence of a procedure, to the board.

3. What should I do if my association does not have a written ADR procedure?

If your association does not have a procedure, you may file a complaint with the Association Regulation unit by filling in a 'Common Interest Community Association Complaint' form and send it, along with the appropriate supporting documentation, to the Association Regulation unit. If you do not have a copy of the complaint form, you may obtain one from the internet at www.state.nj.us/dca under the Division of Codes and Standards, Bureau of Homeowner Protection, or call 609 984-7574 and ask that a copy be sent to you.

4. Who provides ADR?

This Agency does not provide ADR. Each association's procedure determines who the ADR provider is. The law requires that a person other than an officer of the association, a member of the governing board or a unit owner involved in the dispute shall be made available to resolve the dispute. Employees of the association such as the property management company or the association attorney are constrained from being the ADR provider unless the matter is strictly between two unit owners. The Condominium Act and the Planned Real Estate Development Full Disclosure Act do not prohibit the use of an ADR provider outside the development. There is a State Agency in the NJ Office of the Attorney General, Division of Consumer Affairs, Alternative Dispute Resolution Unit, that will provide ADR free of charge but it is the Board's decision, not the owner's, to use them. This office is located in Newark and can be reached at 973 504-6100.

5. Is there a cost to participate in an ADR?

If you live in a condominium or a cooperative, basic ADR is a common expense pursuant to N.J.S.A 46:8B-14. However, if your association's ADR procedure provides for an appeal process and you decide to utilize it, the association can impose a charge for which you will be responsible. If you live in a homeowner's association, pursuant to a recent court case, you can be charged to participate in an ADR.

6. When does the association have to offer me ADR?

Pursuant to N.J.S.A 46:8B-15(f), a fine shall not be imposed unless the unit owner is given written notice of the action taken and of the alleged basis for the action, and is advised of the right to participate in a dispute resolution procedure. Thus, if you are fined and not offered the opportunity to participate in an ADR, you should fill out the 'Common Interest Community Association Complaint' form and send it, along with the appropriate supporting documentation, to the Association Regulation unit. If you do not have a copy of the complaint form, you may obtain one from the internet at www.state.nj.us/dca under the Division of Codes and Standards, Bureau of Homeowner Protection, or call 609 984-7574 and ask that a copy be sent to you.

7. If the association fines me for something others in the community are doing, what can I do?

If the board fines you without offering you the opportunity to participate in an ADR procedure, you can fill out the 'Common Interest Community Association Complaint' form and send it, along with the appropriate supporting documentation, to the Association Regulation unit. If the board offered you the opportunity to participate in an ADR, you should request to participate in one. As part of the hearing, you should document how you are being treated unfairly as others in the community are not being fined for the same violation.

8. Can I go directly to court if I have a dispute with my association?

The Condominium Act and the Planned Real Estate Development Full Disclosure Act do not prohibit an owner from going directly to court before participating in an ADR. However, the court may send the matter back to the association for ADR if the court believes that ADR may resolve the matter.

9. If the ADR panel heard my matter, but I do not agree with their decision or the board will not abide by the ADR panel's decision, what can I do?

This office has no jurisdiction in these matters. Your alternative is to proceed in court.

10. If I have a dispute with my neighbor but the neighbor refuses to participate in an ADR, what can I do?

If the dispute with your neighbor concerns an infraction of your association's governing documents, you should refer the matter to your board for enforcement. If the board refuses to take action against the neighbor, you may request to participate in an ADR on the basis that the board refuses to enforce the homeowners association's governing documents. If the dispute with your neighbor is of a personal nature, you will have to proceed to court to seek a remedy. The laws the Agency enforces does not require that the offending owner participate in an ADR.

11. Does the law prohibit board members from being involved in an ADR hearing?

The Condominium Act states that a person other than an officer of the association, a member of the governing board or a unit owner involved in the dispute shall be made available to resolve the dispute. It does not prohibit board members from being involved in the dispute.

12. Can the association attorney answer legal questions at the ADR hearing?

The panel may ask the association attorney procedural questions but should refrain from asking specific legal questions regarding the matter at hand.

FINANCIAL ACCESS

1. What financial records am I entitled to see?

The Condominium Act states that associations shall maintain accounting records, in accordance with generally accepted accounting principles, open to inspection at reasonable times by unit owners. The law states that these records shall include a record of all receipts and expenditures and 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.

2. Do I have to make an appointment to review financial records?

The Condominium Act is silent on this issue. However, for practical purposes, the associations can require an owner to make an appointment to review the financial records.

3. Am I entitled to copies of financial records and is the board obligated to mail or email them to me?

The Condominium Act is silent on receiving copies. You may wish to check to see if your association has a Records Access Policy. The policy may dictate the cost for copies. The Condominium Act gives us the authority to compel access. The Department construes the right of access to documents to include the right to copies of those documents.

4. Is my association required to keep our financial records on association property?

The Condominium Act does not address where the financial records of an association must be maintained. You can ask that they be made available at a convenient location but if the association does not wish to comply you may have to travel.

5. Can I remove financial records to review them?

The Condominium Act does not address this issue. However, to ensure records are not in any way altered or destroyed, it is understandable that you would not be allowed to remove the records.

6. If the association informs me the records I wish to review are not available, what can I do?

The Agency can only compel the provision of access to records which the association maintains. You may have to proceed in court to require the association to either reconstruct records or sue the person improperly withholding them.