

NJ Appellate Division Reverses Certain Radburn Regulations Impacting Community Associations

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What You Need to Know

- A recent Appellate Division opinion has reversed, in part, several regulations which impose specific requirements on community associations throughout New Jersey.
- In an appeal arising out of a petition filed by the Community Associations Institute New Jersey Chapter (CAI-NJ), the Appellate Division found that certain of what are referred to as the Radburn Regulations were impermissibly altered and conflicted with existing statutes and were therefore invalid.

On February 23, 2024, the Superior Court of New Jersey Appellate Division issued its opinion in a case involving regulations promulgated by the New Jersey Department of Community Affairs (DCA) – commonly referred to as the Radburn Regulations – which impose specific requirements on the election process for community associations throughout New Jersey and other areas involving community associations.

In its ruling, the Appellate Division reversed three of the Radburn Regulations, which address issues such as representation on the Boards of Trustees of associations, certain actions to be taken during closed meetings of the Boards of Trustees, and requirements relating to absentee ballots and proxy ballots. In addition, the Appellate Division directed that the DCA clarify various of the Radburn Regulations, regarding tallying of votes for Board member elections, notifications to unit owners as to whether they are in good standing, maintenance of minutes and recordings, notices required of meetings of the Board, and requirements for consideration of amendments to bylaws.

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Background

In 2017, the New Jersey Legislature amended the Planned Real Estate Development Full Disclosure Act (PREDFDA) in an effort to reform elections in community associations and enhance resident voting participation rights. In 2019, in response to the passage of PREDFDA, the DCA proposed new regulations as well as amendments to existing regulations. The Radburn Regulations were adopted on January 6, 2020.

On September 30, 2021, the Community Associations Institute New Jersey Chapter (CAI-NJ) petitioned the DCA for the amendment or repeal of the Radburn Regulations. The DCA's February 9, 2022 response agreed to amend some portions of the regulations but denied the remainder of CAI-NJ's petition. CAI-NJ subsequently appealed the denial of certain regulations to the Appellate Division.

Where Things Stand Now

The Appellate Division found that certain regulations had been impermissibly altered and conflicted with existing statutes and were therefore invalid, as follows:

- **Requirement to Reserve Board Seats for Affordable Housing Unit Owners.** The Appellate Division reversed N.J.A.C. 5:26-8.10(a)(2), which states that “[w]hen affordable units, in accordance with the New Jersey Fair Housing Act...represent a minority of units in the development, the bylaws shall reserve a seat or seats on the executive board for election by owners of affordable units.” CAI-NJ argued this regulation conflicts with J.S.A. 45:22A-45.2(f)(1)(c) and would have, if affirmed, required board seats to be reserved for representatives of affordable housing units. The Appellate Division agreed and found the Department’s regulation conflicted with and altered the terms of the statute by “turning an option into a requirement.”
- **Requirement for Open Session Board Votes.** The Appellate Division reversed N.J.A.C. 5:26-8.12(e)2, which provided that a board may not take a binding vote during a closed session. CAI-NJ argued that PREDFDA allows association boards to hold closed sessions based on the four exceptions, and votes taken at those sessions may be binding as long as they fall into one of the four exceptions under J.S.A. 10:4-6 to -21. The Appellate Division agreed and found the “statute does not forbid binding votes from being taken at all closed meetings, as the regulation does.”
- **Requirement Mandating Both a Proxy and an Absentee Ballot for Bylaw Amendment Votes.** The Appellate Division partially reversed N.J.A.C. 5:26-8.13(f)4, which required that absentee and proxy ballots be included with the notice for the meeting where bylaw amendments are considered. CAI-NJ argued that this regulation conflicted with J.S.A. 45:22A-46(d)(2)(d). The Appellate Division agreed and found the regulation conflicted with the statute and therefore the requirement mandating that both a proxy and an absentee ballot must be included when seeking a vote to amend the bylaws was invalid.

Published Articles (Cont.)

Greenbaum partner Dennis A. Estis, co-author of this Alert, was counsel in this matter and argued the case for appellant CAI-NJ. Mr. Estis was joined on the briefs by litigation associate and Alert co-author Akshar U. Patel.

Please contact Mr. Estis to discuss how the reversed Radburn Regulations may impact your community.

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