



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0805

PHILIP D. MURPHY  
*Governor*

LT. GOVERNOR SHEILA Y. OLIVER  
*Commissioner*

December 28, 2020

Eileen McCarthy Born, Esq.  
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Via Email ([eborn@dolanlaw.com](mailto:eborn@dolanlaw.com)) and Regular Mail

**Re: Cranberry Lake Community Club, Byram, Twp., NJ**

Dear Ms. Born,

I am in receipt of your correspondence dated October 2, 2019 to Mr. Edward R. Hannaman of the Association Regulation Unit (ARU) in the Bureau of Homeowner Protection (BHP) of the New Jersey Department of Community Affairs (DCA), relative to the Cranberry Lake Community Club (CLCC) in Byram Township, New Jersey. As you are aware, the ARU's original contact with the CLCC, arose from a property owner's complaint to the ARU. That complaint resulted from your determination and proclamation that the CLCC was a Planned Real Estate Development (PRED). The complaint contends that if true, CLCC was in violation of the 2017 voting and elections amendments to the Planned Real Estate Development Full Disclosure Act (PREDFDA).

While your letter is not entirely clear, you seem to indicate that CLCC is a PRED, but then argue that the DCA is either not empowered to address the complainant's allegations, nor empowered to address whether CLCC constitutes a PRED under the governing legislation and regulatory scheme. As indicated in your October 2, 2019 correspondence, the preliminary issue is whether the CCLC is a planned real estate development subject to the PREDFDA. Pursuant to the Parsippany and Ramapo Mountain court cases, a determination that a particular lake community falls under the PREDFDA may present close and complex questions of law and fact. See generally, Purzycki v. Lake Parsippany Prop.

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Owners Ass'n. Inc., MRS-C-2-17 (Law Div. Oct 7, 2019); Ramapo Mountain Lakes, Inc. v. Owners of Prop. in Ramapo Mountain Lakes, BER-L-5969-18 (Law Div. Dec. 21, 2018). Additionally, there are substantial matters of equity at stake in unilaterally concluding that CLCC, or any other lake community, is a PRED. See, e.g. Desiderio v. D'Ambrosio, 190 N.J. Super. 424, 429-30 (Law Div. 1983) (citing Lavin v. Hackensack Bd. of Ed., 90 N.J. 145, 152-153 (1982) in denying replevin action demanding property and noting that the passage of time alone may be sufficient to apply laches.); see also In re Estate of Crawford, 115 Mich. App. 19, 26 (Mich. Ct. App. 1982) (rejecting property claim when party had constructive notice of quit claim deed for five years); see also Royal Associates. v. Concannon, 200 N.J. Super. 84, 92 (App. Div. 1985) (noting that the broad doctrine of equitable estoppel may arise from any action by a party including negative omission to act). Many owners in other lake communities have contacted the DCA to voice their concerns and surprise about suddenly being subjected to mandatory fees and assessments. These owners are shocked when they are threatened with liens against their property and the possibility of foreclosure based on your legal analysis and unilateral determination that lake community clubs and associations, which were previously voluntary, are now subject to the PREDFDA. Historically, such communities have only charged dues and assessments to voluntary individual members.

The Ramapo Mountain Lakes case illustrates the factual and legal complexities involved in determining whether a lake community is a PRED. The wide variety in which each lake community is formed and operated creates unique questions of fact and law as to whether the lake community is a PRED. As Richard F. Smith, the qualified expert in Ramapo Mountain Lakes explained: “in reviewing other lake communities he found wild variation in how the communities were developed. Citing Lakes Arrowhead, Shawnee and Walkill he testified that there was no uniform plan of development, just a variety of solutions.” Ramapo Mountain Lakes, Inc., BER-L-75-17, at \*50 (Law Div. Feb. 3, 2020).

As the attorney for Ramapo Mountain Lakes, Inc. (“RMLI”), you are aware that RMLI commenced that action seeking a declaratory judgment pursuant to N.J.S.A. 2A:16-56. Ibid. at 1 RMLI sought a determination that it had the authority to assess each property within the lake community for its share of the maintenance and repair costs of the common elements. Ibid. As you apparently recognized or should have recognized in Ramapo Mountain Lakes, unilaterally proceeding to assess and encumber

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properties as PRED's when they have not actually been treated as such since the PREDFDA and its corresponding regulations were enacted, is inappropriate.

CLCC is seeking to assert a statutory right against property owners who have had no reason to believe CLCC has such a right. The PREDFDA does not grant CLCC, or any other lake community, the authority to unilaterally decide it is now a PRED. The February 3, 2020 decision in Ramapo Mountain Lakes demonstrates that not only is a judicial determination necessary for determining the community's status as a PRED—it also shows the need to determine the status of the individual properties within the community. Ramapo Mountain Lakes, Inc., BER-L-76-17, \*66-67 (Law Div. Feb. 3, 2020). The Court in Ramapo Mountain Lakes was asked to determine whether every property within the Ramapo Mountain Lakes community was subject to RMLI's authority to assess for maintenance and repair costs for the common elements. Ibid. The primary question for the Court was whether the filed maps, original deeds, Indenture of 1951 and Tripartite Agreement of 1953 not only established Ramapo Mountain Lakes as a PRED, but also whether every property within the Ramapo Mountain Lakes community possessed the requisite notice. Ibid. The court noted that:

those owners of property whose original owners received title from NHFA following the filing of the indenture, Tripartite Agreement, or both, had notice of the RML (Ramapo Mountain Lakes Association) and that the owners of those properties are obligated to pay an equitable share of the maintenance charges, including taxes and for the facilities and the dams.

The Court finds those owners of properties whose original owners received title from NHFA prior to the filing of the Indenture and whose title search did not reference either the indenture or the Tripartite Agreement did not have notice that their properties were part of a planned lake/common interest community as those documents would not have appeared in their chain of title and therefore a reasonable search would not have disclosed that document.

The court acknowledges that its ruling may result in the owners of some properties in close proximity to the lakes being held not to have notice that their properties were part of a planned lake/common interest community while some owners of properties located further from the lakes will be found to have had notice that their properties were part of a planned lake/common interest community.

[Ramapo Mountain Lakes, Inc. v. Owners of Property in Ramapo Mountain Lakes, BER-L-75-17, 69-70 (Law Div. Feb. 3, 2020).]

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Based on the correspondence exchanged in this matter between the DCA, CLCC and yourself, it is apparent that no civil litigation or judicial determination has been sought to declare CLCC a PRED subject to PREDFDA, and if so, which specific properties are subject to the PRED. As such, it is improper for CLCC to assert its status as a PRED and seek to assess mandatory assessments or impose liens on property owners within the Cranberry Lake community who had previously not joined the club, and were not assessed by the club as members. Furthermore, you acknowledge that the neighboring communities known as Lackawanna Cove, Cranberry Ledge and Rose Properties “were not made subject to the original restrictions and not located on the original filed map.” This demonstrates the (1) fact sensitive nature of these cases, (2) the need for a judicial determination as to CLCC’s status as a PRED, (3) the need to determine whether the other communities are part of a PRED, and (4) the need to ascertain which individual properties are subject to the Associations’ assessments.

Until such time as a judicial determination is made regarding these issues, CLCC should cease representing and conducting itself as a PRED subject to the PREDFDA. CLCC has no authority to unilaterally determine it is a PRED. Similarly, CLCC has no legal basis to either threaten owners with liens, nor to file them against such owners and their property. Any liens CLCC may have filed for unpaid assessments against any such property owners are unsupported by the PREDFDA and should be discharged at the CLCC’s sole expense.

It must also be emphasized that a fundamental principle of PREDs is that membership is not optional, nor is a PRED permitted to grant membership to any person or property based on an individual’s agreement to make full payment of assessments paid by the legitimate members of the PRED Association. The 2017 Amendments to PREDFDA were provided to address the rights of unit owners known to be in a PRED. The 2017 amendments to PREDFDA do not change or alter status of those persons who have never considered themselves part of a PRED and have never been treated or assessed as members of a PRED, particularly when the Community itself has never previously considered itself a PRED or acted in a manner consistent with a PRED. The Cranbury Lake Community Club and other similarly situated lake communities current application of PREDFDA and its’ 2017 amendments is misplaced. The definitions of “Planned Real Estate Development”, “common promotional plan”, and “unit” have not been changed at all in the 2017 Amendments. The 2017

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PREDFDA amendments of the terms “Owner”, “Association”, “Association Member” do not indicate an intent to expand the reach of the PREDFDA to those persons and communities that have never sought to be considered a PRED. Rather, they seek to ensure that those persons owning units in a PRED are included in the democratic process of those communities.

The genesis of the DCA’s contact with the CLCC was in response to an election/voting complaint in an alleged PRED community, which, as detailed in this letter, has not been judicially determined to be a PRED. The basis of the complaint, as indicated in the letters from the DCA to CLCC dated June 20, 2019 and September 11, 2019, was that persons could essentially opt into the club for voting purposes and then opt out of the club after the vote. Such actions are not compliant nor in accordance with PREDs and the PREDFDA. However, because there has been no judicial determination that CLCC is a PRED, subject to PREDFDA, the DCA will stay action on this complaint until there is a judicial determination as to CLCC’s PRED status and that of individual members. A judicial determination as to the status of the properties should resolve the basis of the current complaint—only the judicially determined members of the PRED will be permitted to vote and/or run for election to the board.

However, the DCA stands ready to take any and all administrative and legal action necessary and warranted to ensure lake community associations, such as CLCC and other similarly situated lake community associations, do not utilize PREDFDA in an unauthorized and improper manner. This includes levying assessments against property owners whose homes are not subject to the PREDFDA.

Please be advised, that this letter and the DCA’s position in this matter is subject to public dissemination and access.

Sincerely,

A handwritten signature in black ink, appearing to read "James F. Fahy". The signature is stylized with several loops and a long horizontal stroke extending to the right.

James F. Fahy  
Bureau Chief  
Department of Community Affairs  
Bureau of Homeowner Protection