

## **DCA ACCESS TO FINANCIAL RECORDS GUIDE\***

For owners in Common Interest Communities

The New Jersey Condominium Act,( N.J.S.A. 46:8B-14(g), provides that associations shall be responsible for “the maintenance of accounting records in accordance with generally accepted accounting principles open to inspection by unit owners at reasonable times.” These accounting records shall include (1) a record of all receipts and expenditures; and (2) 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. The Department of Community Affairs has authority to enforce this access right.

In order to maintain consistency, courts have held that the right of access granted to condominium owners applies to those in other types of associations such as cooperatives and homeowners associations. Part of the right of access is the right to make copies of records. Access to financial records under our jurisdiction is considered to be unconditional and thus may not be denied because an owner is not paid up in association fees or has any outstanding violations. Although an association may require an owner to sign an acknowledgement listing the records to which access was granted or of having received an information sheet on consequences for misuse, it cannot require owners to agree to any confidentiality as a precondition for access or copying.

Because this is a statutory right, the owner need not provide any justification for requesting access. For the same reason, there is no need for any Board vote regarding the granting of access. Owners should allow the association a reasonable time to comply with a request considering the factors involved such as; the size of the association, its resources, the number of records requested, the presence or absence of professional management, the number of other pending requests, the general workload and relevant circumstances. If the association denies access or unreasonably delays or conditions access, the Department, acting through the Association Regulation Unit, has the power to order compliance.

While the law we enforce does not require the association to send a requesting owner copies of the records, (as opposed to allowing access), your association governing documents may offer this option. If that is the case and the association does not comply, you may wish to consider requesting alternative dispute resolution (ADR, see other handout.) Note, the fact that an association may send out copies of financial documents like budgets or balance sheets does not affect its obligation to allow access.

The association must grant access without charge to the requesting individual (other than a proportionate share as an owner), even if another party charges the association a production fee. Although ideally the association will make records available on site, circumstances may require that an owner travel to an accountant’s or property manager’s office. Owners should check if the association keeps records in an electronic format. If it includes all records and copies of items such as actual bills and checks, that would be most convenient.

Owners can make their own copies on site if their method does no harm to the documents. In the event an owner wishes the association to make copies, the association can charge a fee. Fees must be reasonably related to the association’s copying cost and consistent with the owner’s right. An owner has the right to determine which records he or she would like copied. In the event there is an extensive list, it is common and not unreasonable for associations to require an advance payment. It is

\*Except for matters specifically cited as “the law”, this handout should not be referred to by owners as “the law”.

permissible for an owner to bring a knowledgeable person with them such as an accountant or one familiar with corporate financial records. In order to maintain the integrity of the records, it is expected that an association will have a representative present during a review.

Owners should note that except for the records of receipts and expenditures and unit payment records, the law does not establish other specific accounting records as being required to be kept. And note that access is to “accounting records”, thus we cannot support an owner’s demand for analyses, internal financial reports or explanations of accounting terms or methodology. While there is general agreement on records constituting basic accounting records for an association, others may be subject to differing interpretation by financial authorities. Thus, each association, in consultation with its accountant, should identify which of its records are accounting records. If you have a basis for disagreeing with the classification, you may request alternative dispute resolution (ADR). If the association refuses to allow an owner access to basic information such as bank statements, ledgers, journals or bills that are clearly covered, you should complete our agency complaint form and file it with us. It is clear that supporting documents such as vendor or service bills as well as payments are included. And, although certain board proceedings, such as discussions on legal actions, may be confidential, the resulting attorney bills are not. Attorneys claiming bills contain privileged material can redact such information before allowing access.

The law allows unit owners to access unit owner records for other unit owners. Should such records contain legitimately confidential information, such as social security numbers or unlisted telephone numbers, that information can be redacted. Owners are permitted to see the payment record of their fellow owners much the same as municipal property tax records are open to the public. The discovery of payment arrearages without any lien or collection notations allows owners to inquire about steps the association is taking to protect itself financially. A review of overall payment records allows owners to determine their association’s financial health. The association’s financial situation and management are basic board election issues.

Prior to making an access request, it is useful to ask the association about the titles and contents of the financial records it keeps so that a request can be specific. Association responses to access requests vary widely. There may be certain restrictions as to the time and location where the records may be reviewed. Also, in the event a request is not specific as to the records requested or the years to which the request pertains; the association is free to provide access in the manner it wishes. There is no set time period in which the association must make records available. Thus, the default is a reasonable time considering all the circumstances.

Especially in larger associations, it is not productive to begin with overbroad requests. An owner desiring to access records covering a lengthy time frame, should make separate requests for specific periods. Unless precluded by governing documents, an owner may wish to make an informal oral request for access. If it is denied or ignored, one must make a written request to inspect records. If the governing documents are not specific as to whom the records request should be made; address the request to the governing board. The request should be made reasonably in advance of the desired review date and in accordance with any requirements in the association’s governing documents-provided they do not conflict with the owner’s legal rights. Be aware that current records may be in use by an accountant for tax preparation purposes.

## Access to Financial Information

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If the association denies, or unduly restricts, access to accounting records, you can complete and submit the agency's complaint form, along with the appropriate supporting documentation to the address supplied on the form. We can only compel associations to provide access to records under their control. In situations where a prior board member or property manager refuses the association's request for the return of records, it is incumbent on the association to pursue their return. This agency cannot order that records be returned. Similarly, neither this nor any State agency has jurisdiction over the manner in which records are maintained. Although poor record storage or indexing may delay record access, they are not an excuse for denying access.

Owners should remember that boards are elected to exercise judgment in making financial decisions and a disagreement with how a board allocates or manages funds is an internal matter subject to change through an election. Should an owner believe that records reveal misappropriation or fraud, he or she may wish to ask for clarification from the board or provide the records to a personal accountant or attorney for review and guidance before bringing the matter to the attention of their county prosecutor. This agency has no jurisdiction over such matters.

The law does not mandate annual audits for owner controlled associations and this agency has no authority to mandate them. However, if your governing documents require them and the association fails to comply, you may wish to request to participate in an ADR procedure (see agency's ADR handout). If you are dissatisfied with an ADR outcome, you can seek a court order for an audit.

All New Jersey statutes are available online at [www.njleg.state.nj.us](http://www.njleg.state.nj.us). Once on the page, scroll down and on the left side look for the category, "Laws and Constitution", click on Statutes below that title and either scroll down to the appropriate Title number or type in the full name or citation in the search box. Any questions as to the functioning should be directed to njleg. Statutes are also available at county law libraries and often in municipal buildings. We do not provide copies of the Condominium Act or the Planned Real Estate Development Full Disclosure Act (N.J.S.A. 45:22A-21 et seq.).