

[N.J.A.C. 5:26](#)

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 52 No. 10, May 18, 2020

**NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 26.
PLANNED REAL ESTATE DEVELOPMENT FULL DISCLOSURE ACT REGULATIONS**

Title 5, Chapter 26 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

[N.J.S.A. 45:22A-21](#).

History

CHAPTER SOURCE AND EFFECTIVE DATE:

Effective: April 4, 2018.

See: [50 N.J.R. 1210\(a\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, became effective November 22, 1978 as R.1978 d.403. See: 10 N.J.R. 416(c), 11 N.J.R. 8(a).

Pursuant to Executive Order No. 66(1978), Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was readopted as R.1986 d.129, effective March 27, 1986. See: 18 N.J.R. 392(a), 18 N.J.R. 841(a).

Pursuant to Executive Order No. 66(1978), Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was readopted as R.1991 d.123, effective February 7, 1991. See: 22 N.J.R. 1702(a), 23 N.J.R. 687(c).

Pursuant to Executive Order No. 66(1978), Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was readopted as R.1996 d.94, effective January 24, 1996. See: [27 N.J.R. 4478\(a\)](#), [28 N.J.R. 1226\(a\)](#).

Pursuant to Executive Order No. 66(1978), Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was readopted as R.2001 d.48, effective January 11, 2001. See: [32 N.J.R. 1272\(a\)](#), [33 N.J.R. 550\(c\)](#).

Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was readopted as R.2006 d.270, effective June 22, 2006. See: [37 N.J.R. 2755\(a\)](#), [38 N.J.R. 3019\(b\)](#).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was scheduled to expire on December 19, 2013. See: [43 N.J.R. 1203\(a\)](#).

Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was readopted as R.2011 d.159, effective May 5, 2011. See: [42 N.J.R. 3016\(a\)](#), [43 N.J.R. 1332\(a\)](#).

Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was readopted, effective April 4, 2018. See: Source and Effective Date.

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Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, expires on April 4, 2025.

LAW REVIEW AND JOURNAL COMMENTARIES:

Representing a Purchaser in a Distressed Planned Unit Development. J. David Ramsey, 153 N.J.Law. 34 (Mag.) (May/June 1993).

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[N.J.A.C. 5:26-1.1](#)

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§ 5:26-1.1 Introduction

The Planned Real Estate Full Disclosure Act (Chapter 419, P.L. 1977, [N.J.S.A. 45:22A-21](#) et seq.) became effective November 22, 1978. These rules have been adopted to enable the Division of Codes and Standards to implement the Act and to enable owners of property affected to more easily and more fully comply with the requirements of the Act.

History

HISTORY:

Amended by R.1981 d.130 effective May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

"and Urban Renewal" deleted after "division of Housing".

Amended by R.1984 d.434, effective October 1, 1984.

See: 16 New Jersey Register 2032(a), 16 New Jersey Register 2522(a).

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

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§ 5:26-1.2 Affirmative determination

(a)The Act provides for the issuance of an order of registration upon an affirmative determination of the Division that:

- 1.The developer can convey or cause to be conveyed the lots, parcels, units or interests offered for disposition, if the purchaser complies with the terms of the offer; and
- 2.There is reasonable assurance that all proposed improvements can be completed as represented; and
- 3.The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the Division in subchapter 5 hereof and afford full and fair disclosure; and
- 4.The developer, its officers and/or principles have not been convicted of a crime involving any aspect of the real estate sales business in this State, the United States, or any other state or foreign country within the past 10 years; and
- 5.The developer, its officers and/or principals have not been subject to any permanent injunction or final administrative order restraining a false or misleading plan involving real property disposition, the seriousness of which in the opinion of the Agency warrants the denial of registration; and
- 6.The public offering statement requirements have been satisfied.

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§ 5:26-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the Planned Real Estate Development Full Disclosure Act, Chapter 419, P.L. 1977, [N.J.S.A. 45:22A-21](#) et seq., as amended; provided, however, that "act" means the Retirement Community Full Disclosure Act, P.L. 1969, c.215 ([N.J.S.A. 45:22A-1](#) et seq.) when applied to any portion of a retirement community issued a notice of filing or registered pursuant thereto.

"Advertising" means and includes the publication or causing to be published of any information offering for disposition or for the purpose of causing or inducing any other person to purchase an interest in a planned real estate development or retirement community, including the sales contract to be used and any photographs or drawings or artist's representation of physical conditions or facilities on the property existing or to exist by means of any:

1. Newspaper or periodical;
2. Radio or television broadcast;
3. Written, printed or photographic matter;
4. Billboards or signs;
5. Display of model houses or units;
6. Material used in connection with the disposition or offer of the development by radio, television, telephone or any other electronic means; or
7. Material used by developers or their agents to induce prospective purchasers to visit the development, particularly vacation certificates which require the holders of such certificates to attend or submit to a sales presentation by the developer or his agents.

"Advertising" does not mean: Stockholder communication such as annual reports, interim financial reports, proxy materials, registration statements, securities prospectuses, applications for listing securities on stock exchanges, and the like; all communications addressed and relating to the account of any person who has previously executed a contract for the purchase of the developer's lands, except when directed to the sale of additional lands.

"Agency" means the Division of Codes and Standards of the State Department of Community Affairs.

"Association" means an association for the management of common elements and facilities, organized pursuant to Section 1 of P.L. 1993, c. 30 ([N.J.S.A. 45:22A-43](#)).

"Association member" means the owner of a unit within a planned real estate development, or a unit's tenant to the extent that the bylaws of the planned real estate development permit tenant membership in the association, and the developer to the extent that the development contains unsold lots, parcels, units, or interests pursuant to Section 1 of P.L. 1993, c. 30 ([N.J.S.A. 45:22A-43](#)).

"Blanket Encumbrance" means a trust deed, mortgage, judgment or other lien or encumbrance including an option or contract to sell or a trust agreement affecting a development or retirement community of more than one lot, parcel, unit or interest therein, but does not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

"Bylaws" means the governing documents adopted under this chapter for the administration and management of the property.

"Commissioner" means the Commissioner of Community Affairs.

"Common promotional plan" means any offer for the disposition of lots, parcels, interests or units of real property by a person or group of persons acting in concert, where such lots, parcels, units or interests are contiguous, or are known, designated or advertised as a common entity or by a common name.

"Condominium" means the form of ownership of real property under a master deed providing for ownership by one or more owners of units or improvements together with an undivided interest in common elements appurtenant to each such unit.

"Condominium property" means the land covered by the master deed, whether or not contiguous, and all improvements thereon, all owned either in fee simple or under lease, and all easements, rights, and appurtenances belonging thereto or intended for the benefit thereof.

"Conversion" means any change with respect to a real estate development, subdivision, apartment complex or other entity concerned with the ownership, use or management of real property which would make such entity a planned real estate development or retirement community.

"Director" means the Director, Division of Codes and Standards, Department of Community Affairs.

"Disposition" means any sale, contract, lease, assignment, or other transaction concerning a planned real estate development or retirement community.

"Division" means the Division of Codes and Standards, Department of Community Affairs.

"Executive board" means the executive board of an association, as provided for in Section 3 of P.L. 1993, c. 30 ([N.J.S.A. 45:22A-45](#)).

"Interest" means any and all rights to use and enjoy any incident of ownership of any part of a planned real estate development or retirement community.

"Material change" means, but is not limited to, any significant change in the size or character of the development or interest being offered or anything having a significant effect on the rights, duties or obligations of the developer or purchaser.

"Nonbinding reservation agreement" means an agreement between the developer and a prospective purchaser which may be cancelled without penalty by either party upon written notice at any time prior to the formation of a contract for the disposition of any lot, parcel, unit or interest in a planned real estate development or retirement community.

"Offer" means an inducement, solicitation, advertisement, or attempt to encourage a person to acquire a lot, parcel, unit or interest in a planned real estate development or retirement community.

"Person" shall be defined as in [R.S. 1:1-2](#).

"Planned Real Estate Development" or "development" means any real property situated within this State, whether contiguous or not, which consists of, or will consist of, separately owned areas, irrespective of form, be it lots, parcels, units or interests, and which are offered or disposed of pursuant to a common promotional plan, and providing for common or shared elements or interests in real property. This definition shall include, but not be limited to, "planned unit development" and "planned unit residential development" as defined in the Municipal Land Use Law, P.L. 1975, c. 291 ([N.J.S.A. 40:55D-6](#)). This definition shall not include any form of timesharing subject to the New Jersey Real Estate Timeshare Act, P.L. 2006, c. 63.

"Purchaser" or "Owner" means any person or persons who acquire a legal or equitable interest in a lot, parcel, unit or interest in a planned real estate development or retirement community and shall be deemed to include a prospective purchaser or prospective owner.

"Retirement Community" means any land which is divided or proposed to be divided into 10 or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan where such is advertised or represented as a retirement community or as a community primarily for retirees or elderly persons or where there is a minimum age limit tending to attract persons who are nearing age of retirement, whether located within this State or without.

"Umbrella or master association" means a type of association that is made up of representatives across multiple associations established for the governance, management, and oversight of the common elements and facilities of multiple developments.

"Unit" means any lot, parcel, unit, or interest in a planned real estate development that is, or is intended to be, a separately owned area thereof.

"Voting eligible tenants" means a tenant of a unit within a planned real estate development in which the bylaws of the development permit the tenant's participation in the executive board elections or the development has allowed tenant participation in executive board elections as a standard practice prior to the effective date of P.L. 2017, c. 106 ([N.J.S.A. 45:22A-45.1](#) et seq.). In either instance, the owner shall affirmatively acknowledge the right of the tenant to vote through a provision of a written lease agreement or a separate document. "Voting eligible tenants" shall not be construed to affect voting as an agent of the owner through a proxy or power of attorney.

History

HISTORY:

As amended, R.1979 d.439, eff. November 1, 1979.

See:

11 N.J.R. 497(a) ,

11 N.J.R. 610(b) .

As amended, R.1981 d.130, eff. May 7, 1981.

See:

12 N.J.R. 631(b) ,

13 N.J.R. 259(a) .

"Agency", "director", and "division" amended by deleting "and Urban Renewal" after "Division of Housing".

As amended, R.1984 d.434, eff. October 1, 1984.

See:

16 N.J.R. 2032(a) ,

16 N.J.R. 2522(a) .

Amended definitions of "Agency"; "Director"; "Division".

Amended by R.1989 d.317, effective June 19, 1989.

See:

21 N.J.R. 958(a) ,

21 N.J.R. 1669(a) .

Additional meaning of "Act" added which includes units registered under [N.J.S.A. 45:22A-1](#) et seq. (P.L. 1969, c.215).

Amended by R.1996 d.94, effective February 20, 1996.

See:

[27 N.J.R. 4478\(a\)](#) ,

[28 N.J.R. 1226\(a\)](#) .

Amended by R.2007 d.76, effective March 5, 2007.

See:

[38 N.J.R. 4970\(a\)](#) ,

[39 N.J.R. 767\(a\)](#) .

In definition "Interest", deleted ", and shall specifically include 'time-share estates' as defined herein" from the end; in definition "Planned Real Estate Development", inserted a comma following "which consists of", inserted ", P.L. 1975, c. 291", and added the last sentence; and deleted definition "Time-Share Estates".

Amended by R.2020 d.056, effective May 18, 2020.

See:

[51 N.J.R. 795\(a\)](#) ,

[52 N.J.R. 1057\(a\)](#) .

Added definitions "Association", "Association member", "Bylaws", "Condominium", "Condominium property", "Executive board", "Umbrella or master association", "Unit", and "Voting eligible tenants"; and deleted definition "State".

Annotations

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§ 5:26-1.4 Administration

The Act shall be administered by the Division of Codes and Standards of the State Department of Community Affairs, through the Bureau of Homeowner Protection. All correspondence and inquiries may be addressed to the Bureau of Homeowner Protection, PO Box 805, Trenton, New Jersey 08625-0805.

History

HISTORY:

As amended, R.1981 d.130, eff. May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

"and Urban Renewal" deleted after "Division of Housing".

As amended, R.1984 d.434, eff. October 1, 1984.

See: 16 New Jersey Register 2032(a), 16 New Jersey Register 2522(a).

Section substantially amended.

Amended by R.1990 d.452, effective September 4, 1990.

See: 22 New Jersey Register 1702(a), 22 New Jersey Register 2682(b).

Bureau of Construction Code Enforcement changed to Consumer Protection.

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

Amended by R.2001 d.48, effective February 5, 2001.

See: [32 New Jersey Register 1272\(a\)](#), [33 New Jersey Register 550\(c\)](#).

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[N.J.A.C. 5:26-2.1](#)

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§ 5:26-2.1 Registration required

Except as otherwise provided in this subchapter, no developer may offer or dispose of any interest in a planned real estate development or retirement community prior to the registration of such planned real estate development or retirement community with the Agency.

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§ 5:26-2.2 Exemptions

(a) Unless the method of disposition is adopted for purposes of evasion, the provisions of these rules shall not apply to offers or dispositions:

1. By an owner for his or her own account in a single or isolated transaction;
2. Wholly for industrial, commercial, or other non-residential purposes;
3. Pursuant to court order;
4. By the United States, by this State or any of its agencies or political subdivisions;
5. Of real property located without the State;
6. Of cemetery lots or interests;
7. Of less than 100 lots, parcels, units or interests; provided, however, that, with regard to condominiums, cooperatives or retirement communities, this exemption shall not apply, irrespective of the number of lots, parcels, units or interests offered or disposed of;
8. Of developments where the common elements or interests, which would otherwise subject the offering to the Act, are limited to the provision of unimproved, unencumbered open space;
9. In a development composed wholly of rental units, where the relationship created is one of landlord and tenant;
10. Where the offering is not part of a larger offering and consists of fewer than 10 lots, parcels, units or interests, or where the offering consists entirely of units affordable to persons of low or moderate income, as determined in accordance with the "Fair Housing Act," P.L. 1985, c.222 ([N.J.S.A. 52:27D-301](#) et seq.), and legally restricted to assure continued affordability in accordance with N.J.A.C. 5:14-4, N.J.A.C. 5:80-26, and/or N.J.A.C. 5:92-12, or where the Agency otherwise finds that the enforcement of the Act is not necessary in the public interest or for the protection of purchasers by reason of the small amount of the purchase price, or the limited character of the offering, or the limited nature of the common or shared elements; provided, however, that as a condition of any exemption granted under this paragraph, the developer shall disclose to prospective purchasers, in a format acceptable to the Agency, such information and documentation as the Agency may deem appropriate, including, without limitation, the following:
 - i. The name, address and telephone number of the developer and of any designated agent;
 - ii. The total number of units proposed for the entire development and the scheduled completion dates;
 - iii. The total number of units currently being offered and the date by which the current phase of construction is scheduled to be completed;

- iv. The types of units being offered (for example, detached homes, townhouses, apartments, non-residential units) and the number of units being offered in each category;
 - v. Whether or not there is a flood hazard zone on or adjacent to the site;
 - vi. Information as to who will control the association and when control by the homeowners will begin;
 - vii. A statement as to who may use common facilities;
 - viii. Information as to how a prospective purchaser may review the declaration of covenants and restrictions, the by-laws of the association, and the rules and regulations, if any, governing the operation of the development;
 - ix. A list of management contracts that are or will be in effect and information as to how a prospective purchaser may review any current management contract or proposed maintenance agreement;
 - x. A statement of the relationship of the developer to the service provider, if any;
 - xi. The amount that it is reasonably anticipated that a prospective purchaser would be required to pay, currently and in the near future, for the operation and maintenance of the common facilities, including the amount set aside for reserves, and information as to how a prospective purchaser may review the current budget; and
 - xii. Information as to how a prospective purchaser may review a copy of the final plat plan, as approved and signed by the local planning board, showing all amenities, facilities and improvements; or
11. Of any form of timesharing.

History

HISTORY:

As amended, R.1979 d.439, eff. November 1, 1979.

See: 11 N.J.R. 497(a), 11 N.J.R. 610(b).

Amended by R.1990 d.408, effective August 20, 1990.

See: 22 N.J.R. 1872(a), 22 N.J.R. 2505(a).

Exemptions and conditions for such exemptions added at (a)10.

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 N.J.R. 4478\(a\)](#), [28 N.J.R. 1226\(a\)](#).

Amended by R.2007 d.76, effective March 5, 2007.

See: [38 N.J.R. 4970\(a\)](#), [39 N.J.R. 767\(a\)](#).

In (a)7, inserted a comma following "that", and deleted ", time-sharing" following "cooperatives"; in (a)10xii, substituted "; or" for a period at the end; and added (a)11.

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§ 5:26-2.3 Requests for exemption

(a) Any person who believes that a planned real estate development or retirement community may be exempt from the provisions of the Act, or who is contemplating establishment of a planned real estate development or retirement community that he or she believes may be exempt, may apply to the Director for a Letter of Exemption.

1. Such application shall be in writing and shall list the reasons why such planned real estate development or retirement community, or proposed planned real estate development or proposed retirement community, may be exempt from the Act.

2. An application for exemption pursuant to [N.J.A.C. 5:26-2.2\(a\)](#) shall be accompanied by a fee of \$ 157.00.

i. No fee shall be charged for any development consisting entirely of units legally restricted to occupancy by households of low or moderated income.

(b) In the event the Director shall determine that such planned real estate development or proposed retirement community is exempt from the Act, he shall issue a Letter of Exemption setting forth the facts upon which his determination is based.

(c) In the event the Director shall determine that such planned real estate development or retirement community or proposed planned real estate development or proposed retirement community is not exempt from the provisions of the Act, he shall deny the request for exemption setting forth the facts upon which his determination is based and shall notify the applicant of his findings.

(d) Any person who is aggrieved by the determination by the Director pursuant to (a) and (b) above is entitled to a hearing on such determination provided said hearing is requested, in writing, no later than 15 days from the date of such determination.

(e) The Director shall issue his determination as to whether a planned real estate development or retirement community is exempt or not within 30 days of the receipt of the request.

History

HISTORY:

Amended by R.1983 d.446, effective October 17, 1983.

See: 15 N.J.R. 1055(a), 15 N.J.R. 1758(b).

Added last sentence to (a).

Amended by R.1987 d.490, effective November 16, 1987.

See: 19 N.J.R. 1684(a), 19 N.J.R. 2134(a).

Fee raised from \$ 50.00 to \$ 80.00.

Emergency amendment, R.1989 d.405, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2127(b).

In (a): raised fee from \$ 80.00 to \$ 104.00 for exemption application.

Added (a)1.

Adopted concurrent proposal, R.1989 d.512, effective September 1, 1989.

See: 21 N.J.R. 2127(a), 21 N.J.R. 3086(a).

Provisions of emergency amendment R.1989 d.405 readopted without change.

Amended by R.1992 d.392, effective October 5, 1992.

See: 24 N.J.R. 2657(a), 24 N.J.R. 3521(b).

Fees increased.

Amended by R.2009 d.77, effective March 2, 2009.

See: [40 N.J.R 5895\(a\)](#), [41 N.J.R. 1009\(b\)](#).

Section was "Request for exemptions". In the introductory paragraph of (a), inserted "establishment of" and "or she"; and in the introductory paragraph of (a)2, substituted "\$ 141.00" for "\$ 112.00".

Amended by R.2014 d.149, effective October 6, 2014.

See: [46 N.J.R. 898\(a\)](#), [46 N.J.R. 2024\(a\)](#).

In the introductory paragraph of (a)2, substituted "\$ 157.00" for "\$ 141.00".

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§ 5:26-2.4 Application for registration; submission and fees

(a) An application for registration shall consist of a statement containing the items set forth in N.J.A.C. 5:26-3 and shall be submitted in the manner and form provided therein, together with the filing fee in the amount of \$ 1,511, plus \$ 151.00 per lot, parcel, unit, or interest, made payable to the Treasurer, State of New Jersey.

1. In the event that lots, parcels, units, or interests are added during registration, an additional fee of \$ 151.00 per lot, parcel, unit, or interest added shall be paid. There shall be no refunds for deletions.
2. No fee shall be charged for units legally restricted to occupancy by households of low or moderate income.

(b) In the event that the Agency determines that an additional engineering study by an engineer designated by the Agency is necessary because of the inadequacy of the engineering survey submitted by the developer, the developer shall pay to the Agency an additional fee in the amount of the cost to the Agency of such additional engineering survey.

History

HISTORY:

Amended by R.1981 d.365, effective October 8, 1981.

See: 13 N.J.R. 474(a), 13 N.J.R. 704(b).

(a) "\$ 500.00 plus \$ 20.00" was "\$ 10.00".

(b) and (c) added.

Amended by R.1982 d.260, effective August 16, 1982.

See: 14 N.J.R. 609(a), 14 N.J.R. 912(a).

Increased fees from \$ 20.00 to \$ 35.00 per unit.

Amended, R.1983 d.370, effective September 6, 1983.

See: 15 N.J.R. 1059(a), 15 N.J.R. 1468(a).

Increased fee for lot, parcel, unit or interest from \$ 35.00 to \$ 45.00.

Amended by R.1987 d.490, effective November 16, 1987.

See: 19 N.J.R. 1684(a), 19 N.J.R. 2134(a).

Amounts of fees raised from \$ 500.00 to \$ 775.00 plus from \$ 40.00 to \$ 75.00 per lot, parcel, unit and additional fee from \$ 45.00 to \$ 75.00.

(c) deleted.

Emergency amendment, R.1989 d.405, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2127(b).

In (a): raised fees from \$ 775.00 to \$ 1,000.00 and from \$ 75.00 to \$ 100.00.

Changed "will" to "shall" regarding no refunds for deletions.

Added (a)1.

Adopted concurrent proposal, R.1989 d.512, effective September 1, 1989.

See: 21 N.J.R. 2127(a), 21 N.J.R. 3086(a).

Provisions of emergency amendment R.1989 d.405 readopted without change.

Amended by R.1992 d.392, effective October 5, 1992.

See: 24 N.J.R. 2657(a), 24 N.J.R. 3521(b).

Fees increased.

Amended by R.2009 d.77, effective March 2, 2009.

See: [40 N.J.R. 5895\(a\)](#), [41 N.J.R. 1009\(b\)](#).

In the introductory paragraph of (a), deleted "as" following "form", and substituted "\$ 1,361," for "\$ 1,080" and "\$ 136.00" for "\$ 108.00"; redesignated the former second and third sentences of (a) as new (a)1; recodified former (a)1 as (a)2; and in (a)1, inserted "that" and "added", and substituted "\$ 136.00" for "\$ 108.00".

Amended by R.2014 d.149, effective October 6, 2014.

See: [46 N.J.R. 898\(a\)](#), [46 N.J.R. 2024\(a\)](#)

In (a), updated the fee amounts throughout.

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[N.J.A.C. 5:26-2.5](#)

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§ 5:26-2.5 Notice of filing

Upon receipt of an application for registration in proper form, accompanied by payment of the required filing fee, the Agency shall, within 10 business days, issue a notice of filing to the applicant. The notice of filing shall not be construed as an approval of the application for registration or any portion thereof.

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[N.J.A.C. 5:26-2.6](#)

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§ 5:26-2.6 Order of registration

Within 90 days from the date of the notice of filing or notice of correction as provided below, the Agency shall enter an order registering the development if the Agency affirmatively determines that the requirements of [N.J.A.C. 5:26-1.2](#) and Section 9 of the Act have been met.

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[N.J.A.C. 5:26-2.7](#)

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§ 5:26-2.7 Notice of correction

When the Agency determines, upon inquiry and examination, that any of the requirements of [N.J.A.C. 5:26-1.2](#) and Section 9 of the Act have not been met, the Agency shall notify the applicant that the application for registration must be corrected in such particulars within 30 days.

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[N.J.A.C. 5:26-2.8](#)

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§ 5:26-2.8 Order of rejection

(a) In the event the requirements of the notice of correction are not met within the time allowed, the Agency may enter an order rejecting the registration which shall include the findings of fact upon which the order is based.

(b) The Order of Rejection shall not take effect for a period of 20 days from the expiration of the 30 day period mentioned in [N.J.A.C. 5:26-2.7](#).

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[N.J.A.C. 5:26-2.9](#)

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§ 5:26-2.9 Petition for reconsideration

(a) Upon the issuance of an Order of Rejection, the applicant shall have the right to file a petition for a reconsideration with the Agency and shall be entitled to a hearing thereon, provided the petition for reconsideration shall be filed within 20 days of the Order of Rejection.

(b) In the event a petition for reconsideration is filed by the applicant, as provided, the Order of Rejection shall not take effect until such time as the hearing has been held and a determination rendered.

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[N.J.A.C. 5:26-2.10](#)

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§ 5:26-2.10 Automatic registration

The planned real estate development or retirement community shall be deemed to be registered pursuant to [N.J.A.C. 5:26-2.6](#), if within 90 days of the notice of filing or notice of correction, the Agency has not issued an Order of Rejection or the applicant has not consented to a delay in writing.

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[N.J.A.C. 5:26-2.11](#)

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§ 5:26-2.11 Order of revocation

(a) The Agency may revoke a registration after notice and upon finding of fact that the developer has:

1. Failed to comply with the terms of a cease and desist order;
2. Been convicted, subsequent to the filing of the application for registration, in any court, of a crime involving fraud, deception, false pretenses, misrepresentations, false advertising, dishonest dealing or other like offenses;
3. Disposed of, concealed or diverted any funds or assets of any person so as to defeat the rights of purchasers;
4. Failed faithfully to perform any stipulation or agreement made with the Agency as an inducement to grant or reinstate any registration, to approve any promotional plan or public offering statement, or to rescind or modify any order or rule issued by the Agency.
5. Advertised the planned real estate development or retirement community, or responded to applications for the planned real estate development or retirement community, in a manner which was discriminatory on the basis of marital status, sex, race, color, creed, religious principles, national origin, ancestry, affectional or sexual orientation, or on any other basis that may be prohibited under the Law Against Discrimination ([N.J.S.A. 10:5-1](#) et seq.);
6. Willfully violated any provision of the Act or of these regulations; or
7. Made an intentional misrepresentation or concealed a material fact in an application for registration.

(b) The Agency may, after compliance with the notice requirements of (a) above, and finding of fact that a violation for which revocation could be ordered has occurred, issue a cease and desist order in lieu of an order of revocation.

(c) A developer to whom a notice of revocation or a cease and desist order is issued shall have the right to contest the notice or order in an administrative hearing, in accordance with [N.J.A.C. 5:26-11.3](#).

History

HISTORY:

Amended by R.1990 d.452, effective September 4, 1990.

See: 22 N.J.R. 1702(a), 22 N.J.R. 2682(b).

References to the APA and UAPR added at (a).

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 N.J.R. 4478\(a\)](#), [28 N.J.R. 1226\(a\)](#).

In (a) 5 added color, religious principles, ancestry, affectional or sexual orientation, or any other basis prohibited, and added (c).

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Case Notes

Certification submitted by respondent real estate developer did not make an intentional misrepresentation or conceal material facts under [N.J.A.C. 5:26-2.11](#), as the developer reported the vote according to its interpretation of the paragraph describing the percentage of condominium unit owners required to amend the master deed; the language was susceptible to two distinctly different interpretations. [Dep't of Community Affairs, Div. of Codes & Standards v. Fox Dev. Corp., OAL Dkt. No. CAF 10496-06, 2006 N.J. AGEN LEXIS 1024](#), Initial Decision (December 7, 2006).

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[N.J.A.C. 5:26-2.12](#)

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§ 5:26-2.12 Cease and desist orders; injunctions

(a) The Agency may issue an order requiring a person to cease and desist from an unlawful practice or an order requiring him to take such other affirmative action as in the judgment of the Agency will carry out the purposes of the Act or these regulations upon the Agency's determination, after notice and hearing, that a developer has:

1. Violated any provision of the Act;
2. Directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional or sales methods to offer or dispose of a unit;
3. Made any material change in the plan of disposition or development of the subdivision subsequent to the order of registration without obtaining prior approval from the Agency;
4. Disposed of any lot, parcel, unit or interest in a planned real estate development or retirement community which has not been registered with the Agency; or
5. Violated any lawful order, rule or regulation of the Agency.

(b) Upon the determination of the Agency in writing, based on a finding of fact that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order including therein a provision that, upon request, a hearing will be held within 10 days of such request to determine whether or not the temporary cease and desist order shall become permanent. A copy of any temporary cease and desist order shall be sent to the developer by certified mail.

(c) The Agency may, if it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of the Act or a rule, order or regulation of the Agency, bring an action in Superior Court to enjoin the acts or practices and to enforce compliance with the Act or regulations herein.

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[N.J.A.C. 5:26-2.13](#)

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§ 5:26-2.13 Annual report

Within 30 days after the anniversary date of the latest Order of Registration and while the developer retains any interest in the development or retirement community, the developer shall file on a form designated by the Agency an annual report reflecting any material changes in information contained in the original application for registration. This shall not diminish the obligation of the developer to notify the Agency of material changes as they occur. The annual report shall contain a yearly audit of association funds.

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Research References & Practice Aids

LAW REVIEWS AND JOURNAL COMMENTARIES:

Representing a Purchaser in a Distressed Planned Unit Development. J. David Ramsey, 153 N.J.L.J. 34 (1993).

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[N.J.A.C. 5:26-2.14](#)

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§ 5:26-2.14 Order terminating responsibility

Upon a determination by the Agency that an annual report is no longer necessary for the protection of the public interest or that the developer no longer retains any interest and no longer has any contractual, bond or other obligations in the development or retirement community, the Agency shall issue an order terminating the responsibilities of the developer under the Act.

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[N.J.A.C. 5:26-2.15](#)

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§ 5:26-2.15 Registration in this State, other states or with the Federal Government

Any developer who desires to register a planned real estate development or retirement community which has been registered in this State, in other states or with the Federal Government and the requirements of that registration are substantially similar to those imposed by this chapter, may submit a certified copy of the approved application for registration filed in such other jurisdiction or with such other state agency or with the Federal Government and a certified copy of the letter of approval or other written approval thereof. In the event the Agency finds, upon review, that the approval substantially conforms to the standards and requirements imposed by the Act and by this chapter, the Agency may register such planned real estate development or retirement community; provided however, prior to such registration the Agency may require submission of such supplemental documents and information as it may deem necessary.

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[N.J.A.C. 5:26-2.16](#)

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§ 5:26-2.16 Consolidated filing

A developer may register additional property pursuant to the same common promotional plan as those previously registered by the Agency by submitting another application providing such additional information as may be necessary to register the additional lots, parcels, units or interests.

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[N.J.A.C. 5:26-2.17](#)

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§ 5:26-2.17 P.U.D. and P.U.R.D.

(a) The developer of a planned unit development or planned unit residential development shall register the development pursuant to N.J.A.C. 5:26-3 hereof regardless of whether the developer intends to offer the lots, parcels, units or interests to the public or to a builder or builders or to another developer.

(b) In the event the developer offers or intends to offer a number of lots, parcels, units or interests in a P.U.D. or P.U.R.D. to a builder or builders who will construct dwelling units thereon with the intention of offering them to the public, the developer and the builder may submit a joint application for registration or the developer may submit an application for registration and file an amendment pursuant to N.J.A.C. 5:26-3 hereof when the lots, parcels, units or interests are conveyed to the builder.

(c) The items requested in [N.J.A.C. 5:26-3.1\(a\)](#) 1, 3, 4, 16, 17, 19 and 20 shall be submitted for both the developer and the builder.

(d) The warranty provisions of N.J.A.C. 5:26-7 shall be provided by the person who constructs the particular improvements so warranted.

History

HISTORY:

R.1979 d.439, eff. November 1, 1979.

See: 11 New Jersey Register 497(a), 11 New Jersey Register 610(b).

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

Administrative change.

See: [29 New Jersey Register 550\(b\)](#).

In (c), amended N.J.A.C. references.

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[N.J.A.C. 5:26-3.1](#)

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§ 5:26-3.1 Contents of application for registration

(a) The application for registration shall contain the following documents and information:

1. An irrevocable appointment of the Agency to receive service of any lawful process in any noncriminal proceeding arising under the Act against the developer or agents of the developer;
2. The states or other jurisdiction, including the Federal Government, in which an application for registration or similar documents have been or will be filed and any order, judgment or decree entered in connection therewith by the regulatory authorities in each of the jurisdictions or by any court or administrative body thereof;
3. The name, address and principal occupation for the past five years of every officer of the applicant or person occupying a similar status and of any person performing similar management functions; the extent and nature of any such person's interest in the applicant or the development as of a specified date within 30 days prior to the filing of the application for registration;
4. Copies of the articles of incorporation, with all amendments thereto, if the developer is a corporation; copies of all instruments by which the trust is created or declared, if the developer is a trust; copies of the articles of partnership or association and all other organization papers if the developer is organized under another form. In the event the developer is not the legal title holder to the property upon which the development is or is to be constructed the above documents shall be submitted for both the developer and the legal title holder;
5. A legal description by metes and bounds or other acceptable means of the lands to be registered, together with a map showing the proposed or actual subdivision and showing the dimensions of the lots, parcels, units or interests, as available, and the relation of such lands to existing streets, roads and other improvements. The aforesaid map shall be drawn to scale, signed and sealed by a licensed professional engineer or land surveyor;
6. Copies of the deed or other instrument establishing title in the developer and title search, title report or title certificate or binder issued by a licensed title insurance company;
7. A statement concerning any litigation, orders, judgments or decrees which might affect this offering;
8. In the event that the application for registration is for the conversion of a vacant building, an affidavit to that effect shall be submitted by the developer;
9. In the event that the application for registration is for the conversion of a building occupied by residential tenants, an affidavit of service of the proposed Public Offering Statement as required by [N.J.A.C. 5:26-9.3](#) shall be submitted;
10. In the event that the application for registration is for a newly-constructed property, evidence of registration under the New Home Warranty and Builders Registration Act ([N.J.S.A. 46:3B-1](#) et seq.) shall be submitted;

11. A statement that the lots, parcels, units or interests in the development will be offered to the public and sold or alienated without regard to marital status, sex, race, color, creed, religious principles, national origin, ancestry, affectional or sexual orientation, or any other basis prohibited by the Law Against Discrimination ([N.J.S.A. 10:5-1](#) et seq.);
12. A statement of the present condition of access to the development and the existence of any adverse conditions that affect the development that are known, should be known or are readily ascertainable;
13. Copies of all contracts and agreements which the purchaser may be required to execute in connection with this offering;
14. In the event there is or will be a blanket encumbrance affecting the development or a portion thereof, a copy of the document creating it and a statement of the consequences upon a purchaser of a failure of the person bound to fulfill the obligations under the instrument and the manner in which the interest of the purchaser is to be protected in the event of such eventuality;
15. Two copies of the proposed public offering statement;
16. A current financial statement of the developer and any predecessor, parent or subsidiary company, including but not limited to a current profit and loss statement and balance sheet audited by an independent public accountant;
17. A statement concerning any adjudication of bankruptcy during the last five years against the developer, its predecessor, parent or subsidiary company and any principal owing more than 10 percent of the interests in the development at the time of the filing of the application for registration. This requirement shall not extend to limited partners or those whose interests are solely those of investors;
18. Copies of all easements and restrictions, whether of record or not;
19. A statement as to the status of compliance with all the requirements of all laws, ordinances, regulations of governmental agencies having jurisdiction over the premises, including but not limited to any permits required by the Department of Environmental Protection, together with copies of all necessary Federal, State, county and municipal approvals;
20. A statement that the developer, its officers or principals have never been convicted of a crime involving any aspect of real estate sales business in this State, the United States or any other state or foreign jurisdiction and that the developer has never been subject to any permanent injunction or final administrative order restraining a false or misleading promotional plan involving real property disposition;
21. An affidavit, signed by the developer, that the contents of the application are true and accurate;
22. Such other additional information as the Division may require in individual cases after review of an application for registration to assure full and fair disclosure;
23. A listing of the units in the building together with the current monthly rental thereof.

History

HISTORY:

As amended, R.1979 d.349, eff. November 1, 1979.

See: 11 New Jersey Register 497(a), 11 New Jersey Register 610(b).

As amended, R.1981 d.130, eff. May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

(a)12, 21 through 23, 25 through 27.

As amended, R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

In (a), deleted old and added new 7-10 and 13. Also deleted and reserved 15., 21., 22., and 24.

As amended, R.1984 d.434, eff. October 1, 1984.

See: 16 New Jersey Register 2032(a), 16 New Jersey Register 2522(a).

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

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[N.J.A.C. 5:26-3.2](#)

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§ 5:26-3.2 Form of the application for registration

(a) An application for registration shall be submitted in the following form:

1. Two sets of the information and documents required to be filed shall be submitted in separate binders, fastened at the top in such a manner as to permit the reading of each page without requiring removal. The two required copies of the Public Offering Statement shall be submitted in separate binders. The items set forth in [N.J.A.C. 5:26-3.1\(a\)](#)² need not be submitted for developments of 24 or fewer units.
2. All information and documents shall be arranged in the order set forth in [N.J.A.C. 5:26-3.1](#);
3. Each binder shall note the name and address of the developer and the name and address of the person responsible for the preparation of the application on the front cover;
4. The first page shall be a table of contents;
5. The right side of the first page of each section shall bear a tab numbered in conformity with the table of contents. Each tab shall be visible without the necessity of lifting any other tab;
6. If a section or document is omitted, a single sheet of paper, properly tabbed, shall be inserted containing a description of what is omitted and an explanation as to the reason for the omission;
7. With the exception of maps, drawings, surveys and the like, all documents shall be no smaller than 8 1/2 x 11 inches nor more than 8 1/2 x 14 inches.

(b) Plats, maps or surveys which are too bulky to include in a binder may be submitted in a separate folder and a list of such shall be included in the binder.

History

HISTORY:

As amended, R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

In (a)1., added last two sentences.

Administrative change.

See: [28 New Jersey Register 4867\(a\)](#).

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§ 5:26-3.3 Amendment of the application for registration

(a) Developers shall immediately report to the Agency any changes in the information or documents contained in the application for registration, with a request for an amendment of the application for registration.

(b) No changes in the substance or intent of the promotional plan or the plan of disposition or development shall be made unless such change has been approved by the Agency by way of amendment to the application for registration.

History

HISTORY:

As amended, R.1981 d.130, eff. May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

(a) "Material" deleted before "changes".

Annotations

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Case Notes

Failure to amend registration and public offering statement to disclose involvement in litigation warranted imposition of fines against developer. MGKB Financial Group v. Department of Community Affairs, 95 N.J.A.R.2d (CAF) 35.

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[N.J.A.C. 5:26-3.4](#)

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§ 5:26-3.4 Review of requests for amendment

The Agency shall process and review requests for amendments of an application for registration in accordance with the standards and procedures established in this chapter for review of application for registration. Requests for amendment, other than price changes and advertising, shall be accompanied by a fee of \$ 250.00.

History

HISTORY:

As amended, R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

Added last sentence.

Annotations

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[N.J.A.C. 5:26-3.5](#)

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§ 5:26-3.5 Public inspection of application for registration

The Agency shall maintain a copy of every application for registration together with all amendments thereto that have been approved and shall make them reasonably available for public inspection during ordinary business hours at the Agency's office.

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[N.J.A.C. 5:26-3.6](#)

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§ 5:26-3.6 Copies of the application for registration; fee

(a) The Agency shall comply with all reasonable requests for copies of an application for registration, together with all amendments thereto.

(b) The Agency shall charge a fee for such copies equal to the cost of reproduction of the application for registration, with amendments, plus any cost of postage.

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N.J.A.C. 5:26-4.1

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§ 5:26-4.1 Public offering statement required

(a)No developer may dispose of any lot, parcel, unit or interest in a planned real estate development or retirement community unless said developer delivers to the purchaser a current public offering statement on or before the contract date.

1.The Public Offering Statement for new construction applications may be prepared in two parts. Part I shall be in narrative form and shall consist of the information required by [N.J.A.C. 5:26-4.2\(a\)](#)1 through 6, 7i, 8, 9i, 10, 12, 14 and 15 through 23. Part II shall consist of the documents required by [N.J.A.C. 5:26-4.2\(a\)](#)7ii through 9ii, 11, 13 and 22.

2.For new construction applications containing 24 or fewer units, the information specified in [N.J.A.C. 5:26-4.2\(a\)](#)4 need not be included.

3.Public Offering Statements for the conversion of existing buildings shall include all information required by this subchapter and N.J.A.C. 5:26-9.

(b)The public offering statement shall disclose fully and accurately the characteristics of the development and the lots, parcels, units or interests offered and shall make known to prospective purchasers all unusual and material circumstances and features affecting the development. The public offering statement shall be in clear and concise language and combine simplicity and accuracy in order to fully advise purchasers of their rights, privileges, obligations and restrictions.

(c)The Agency may require the developer to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers and may require the revision of a public offering statement which it finds to be unnecessarily complex, confusing or illegible.

(d)The developer shall provide copies of the Public Offering Statement, Part I, at no charge to prospective purchasers upon their request. In any event, the Public Offering Statements, Parts I and II, must be provided at, or prior to, the time a contract is executed, at no charge to the prospective purchaser;

(e)A Public Offering Statement shall not be deemed current unless it contains all amendments approved by the Agency.

History

HISTORY:

As amended, R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

In (a), added 1-3. Also deleted old and added new (d).

Administrative change.

See: [28 New Jersey Register 4224\(a\)](#).

Annotations

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§ 5:26-4.2 Contents of public offering statement

(a) The public offering statement shall contain the following information:

1. The name and principal address of the developer;
2. A narrative description of the interest to be offered including but not limited to the rights and obligations of purchasers in their lots, parcels, units or interests and in the common elements;
3. A narrative description of the development including but not limited to the total number of lots, parcels, units, or interests in the offering, the total number of lots, parcels, units, or interests to be constructed in the entire project, the present and proposed access to the development and the anticipated completion date of the present offering and of the entire development;
4. Relevant community information including but not limited to the existence and location of hospitals, health and recreational facilities, schools, fire and police protection, places of worship, streets, water supplies, levees, drainage control systems, irrigation systems, customary utilities, etc.;
5. A statement of the nature, type and capacity of improvements to be installed by the developer and the estimated date of completion and whether they will be dedicated to the public use. In the event the developer is to construct common recreation or community facilities a statement, together with any plans, of the nature, size, capacity and amenities of such recreational and community facilities such as, but not limited to, air conditioning, furniture, supplies, carpet or drapes, their location within the development and whether or not the use thereof will be limited to owners of the lots, parcels, units or interests, or whether the common recreational or community facilities will be available for use by the general public;
6. A statement of the proposed method of operation and management of the common elements and facilities;
7. The following documents:
 - i. A statement as to who will control the operation and management of the common elements and facilities and when control will be vested in any association, trust or other entity;
 - ii. Copies of any actual or proposed management or service contract, lease or agreement affecting the use, maintenance or access of or to any or all of the common elements or facilities;
8. A copy of the proposed budget for the operation and maintenance of the common elements and facilities based on full occupancy, together with the proposed annual assessment and the monthly charges to be assessed to each type of unit. The budget shall specifically state the amount set aside as reserves for the replacement of the common elements and facilities and shall be accompanied by a letter of adequacy certified by an independent public accountant or other independent expert and by a letter of adequacy of the hazard and liability insurance coverage certified by an independent insurance agent or broker;

9.The following documents:

i.A description of any management or service contract, lease or other contract or agreement affecting the use, maintenance or access of or to any or all of the common elements or community facilities together with a statement as to the effect of each upon the purchaser;

ii.Copies of any management or services contract, lease or agreement affecting the use, maintenance or access of or to any or all of the common elements or facilities;

10.A statement of the relationship, if any, between the developer and the management or servicing agent or firm;

11.A copy of the master deed, declaration of covenants and restrictions and/or any other documents of creation that have been or will be recorded, and the date and book and page thereof;

12.A statement explaining any restrictions on occupancy, the right of alienation and the right of alteration of the lot, parcel, unit or interest;

13.Copies of the instruments that will be delivered to purchasers to evidence their interest in the development;

14.A statement that all monies paid to the developer prior to closing will be held in a separate trust account and the name and location of the institution where the trust account is maintained and the name and address of any trust or escrow agent, until closing or termination of the contract or until a bond or other guarantee acceptable to the Agency is provided. In no event shall the escrow be released before the expiration of the seven-day rescission period;

15.The significant terms of any encumbrances, easements, liens and restrictions, including but not limited to zoning regulations, affecting such lands and each lot, parcel, unit or interest, as well as the use and zoning of adjoining lands;

16.A statement as to whether the property or any portion thereof is regularly or periodically subject to natural forces that would tend to adversely affect the use or enjoyment of the property and whether the property or any portion thereof is located in a Federally designated flood hazard area;

17.A statement as to whether the property or any portion thereof is subject to man made forces that would tend to adversely affect the use or enjoyment of the property such as, but not limited to, the property's proximity to airports or flight paths, railroads, noisy or polluting industrial use or other similar forces. This statement shall also include the text of the notice required to be given to new home purchasers pursuant to [N.J.S.A. 46:3C-8](#) and shall indicate that the rights of the purchaser set forth in that notice are in addition to, and not in lieu of, the rights established by the Planned Real Estate Development Full Disclosure Act and these rules;

18.A statement of all existing taxes affecting any lot, parcel, unit or interest, as well as the estimated real estate tax on each lot, parcel, unit or interest, showing the value thereof and the tax ratio and tax rate for the last three years;

19.A statement of all existing or proposed special taxes or assessments of record and who shall be responsible for payment thereof;

20.A statement of the estimated title closing or settlement costs to be paid by the purchaser that are charged by the developer or the agent of the developer;

21.A statement explaining the warranty or guarantee given by the developer and the rights and remedies of the purchaser;

22.A statement, printed in 10-point bold face type or larger, conspicuously located and simply stated, that the purchaser has the right to cancel any contract or agreement for the purchase of any lot, parcel, unit or interest in the development, without cause, by sending or delivering a written notice of cancellation to the developer or the agent of the developer by midnight of the seventh calendar day

following the day on which such contract or agreement is executed and that all monies paid will be promptly refunded; and

23.A statement explaining the nature, type and amount of hazard and liability insurance supplied or to be supplied by the developer or association and what the insurance covers, an explanation of the nature and type of hazard and liability insurance recommended to be carried by the owner and a statement of the availability and necessity of flood hazard insurance.

History

HISTORY:

As amended, R.1979 d.439, eff. November 1, 1979.

See: 11 New Jersey Register 497(a), 11 New Jersey Register 610(b).

As amended, R.1981 d.130, eff. May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

(a)8, 13, 17 and 25 amended.

As amended, R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

Substantially amended text.

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

Amended by R.2001 d.228, effective July 16, 2001.

See: [33 New Jersey Register 1247\(a\)](#), [33 New Jersey Register 2474\(a\)](#).

In (a)17, added the last sentence.

Annotations

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Case Notes

Offering statement submitted by developer of cooperative housing corporation was not controlling document to validate transfer fees which were paid to cooperative corporation when shares in cooperatives were transferred; offering statement was obligation of developer, and did not represent any contractual agreement between

shareholders and cooperative. [Sulcov v. 2100 Linwood Owners, Inc., 303 N.J.Super. 13, 696 A.2d 31 \(N.J.Super.A.D. 1997\)](#).

Lack of due care is not a defense to statutory action. [Enfield v. FWL, Inc., 256 N.J.Super. 502, 607 A.2d 685 \(Ch.1991\)](#), affirmed [256 N.J.Super. 466, 607 A.2d 666](#), certification denied [130 N.J. 9, 611 A.2d 648](#).

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N.J.A.C. 5:26-4.3

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§ 5:26-4.3 Form

(a)The public offering statement shall be in the following form:

1.A front cover shall contain the name and address of the developer, the name and location of the planned real estate development or retirement community, the effective date of the offering statement, which shall be the date of registration by the Agency, and shall contain the following statement in 10-point bold type:

NOTICE TO PURCHASERS

THE PUBLIC OFFERINGS STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY. PURCHASERS SHOULD ASCERTAIN FOR THEMSELVES THAT THE PROPERTY OFFERED MEETS THEIR PERSONAL REQUIREMENTS. THE NEW JERSEY DIVISION OF CODES AND STANDARDS HAS NEITHER APPROVED NOR DISAPPROVED THE MERITS OF THIS OFFERING. BE SURE TO READ CAREFULLY ALL DOCUMENTS BEFORE YOU SIGN THEM.

2.A reasonably detailed table of contents showing the subject matter of the various sections, subsections or documents contained in the public offering statement and the page number on which each appears.

3.As set forth in [N.J.A.C. 5:26-4.1\(a\)](#), with respect to new construction projects. Part I of the Public Offering Statement shall be in narrative form and, in addition to the items set forth in [N.J.A.C. 5:26-4.1\(a\)](#), shall contain an explanation that the documents referred to in Part I will be provided to prospective purchasers at or prior to the time a contract is executed.

4.The public offering statement shall be printed on good quality unglazed white paper no smaller than 8 1/2 x 11 inches nor larger than 8 1/2 x 14 inches. The cover may be of a different color provided the printed material contained thereon shall be legible.

5.No portion of the public offering statement may be underscored, italicized, or printed in larger, heavier or different color type than the remainder of the statement unless required or permitted by the Agency.

History

HISTORY:

As amended, R.1981 d.130, eff. May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

(a)1: "registration" was "approval".

(a)3: "followed by ... as exhibits" added, "in the order shown therein" deleted.

As amended, R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

In (a), deleted old and added new 3.

As amended, R.1984 d.434, eff. October 1, 1984.

See: 16 New Jersey Register 2032(a), 16 New Jersey Register 2522(a).

Added "and development."

Amended by R.2001 d.48, effective February 5, 2001.

See: [32 New Jersey Register 1272\(a\)](#), [33 New Jersey Register 550\(c\)](#).

In (a)1, substituted "CODES AND STANDARDS" for "HOUSING AND DEVELOPMENT".

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[N.J.A.C. 5:26-4.4](#)

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§ 5:26-4.4 Filing

Two copies of the proposed public offering statement shall be filed with the application for registration and, if the Agency requires revision to the proposed public offering statement, two copies of the revised public offering statement.

History

HISTORY:

As amended, R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

Decreased from three to two copies of statement to be filed.

Annotations

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N.J.A.C. 5:26-4.5

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§ 5:26-4.5 Amendment of the public offering statement

(a) Developers shall immediately report to the Agency any material change in the information or documents contained in the public offering statement, with a request for amendments.

(b) No change in the public offering statement given to prospective purchasers shall be made without having been registered with the Agency.

(c) Amendments and corrections to the public offering statement shall be by replacement of the amended or corrected material by paste-over or permanent means.

History

HISTORY:

As amended, R.1981 d.130, eff. May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

(b): "having been registered with the Agency" was "the written approval of."

Annotations

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§ 5:26-4.6 Review of requests for amendments

The Agency shall process and review requests for amendments of a public offering statement in accordance with the standards and procedures established in this chapter for review of a public offering statement.

Annotations

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[N.J.A.C. 5:26-4.7](#)

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§ 5:26-4.7 Use of the public offering statement

(a) The public offering statement shall not be used for any promotional purposes before registration of the development and thereafter only if used in its entirety.

(b) No person shall represent or imply that the Agency approves or recommends the planned real estate development or retirement community.

Annotations

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[N.J.A.C. 5:26-5.1](#)

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§ 5:26-5.1 General standards

All advertising which is used by or on behalf of the developer to promote a planned real estate development or retirement community shall be accurate, provable, truthful and not misleading so as to fully inform the public and foster their understanding and trust.

Annotations

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[N.J.A.C. 5:26-5.2](#)

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§ 5:26-5.2 Specific standards

(a) Without limiting the general standards of advertising in this chapter, all advertising, except billboards, shall substantially conform to the following specific standards:

1. Advertising that refers to the purchase price of any lot, parcel, unit or interest shall state the full purchase price and shall include any additional assessments or cost to the purchaser;
2. In order to eliminate fictitious pricing or illusory discounts, no certificates shall be distributed indicating that a discount from the advertised price shall be given. This shall not preclude the giving of a discount on the basis of any reasonable criteria;
3. Advertising that contains statements regarding taxes shall not use terms such as "low", "stable" or other descriptive terms, but shall state an accurate estimate of such tax based on the current tax rate, value and ratio;
4. Advertising shall not refer to any common element or facility that does not presently exist unless that fact is prominently stated in the advertising and the proposed date of completion is contained therein;
5. Any reference to proposed improvements for which the purchaser will be assessed shall clearly set forth the fact of the assessment and the amount of the assessment;
6. Advertising shall not state that items or services are free when the cost thereof is included in the assessment;
7. Advertising shall not contain photographs, sketches or artists conceptions of proposed common elements or facilities unless the fact that the photographs, sketches or artist's conceptions are of proposed common elements or facilities is stated immediately adjacent to them. No sketch or artists' conception may be used in advertising unless it is clearly stated immediately adjacent to such sketch or artist's conception that it is in fact a sketch or artist's conception;
8. Advertising shall not refer in wording, photograph, sketch, or artist's conception to any recreational, medical, social, shopping or other facility that is not located within the planned real estate development or retirement community unless it is clearly stated that such facilities are not located within the planned real estate development or retirement community and the approximate distance therefrom, in miles;
9. Advertising shall not refer to a price increase unless the amount and date of the increase are indicated;
10. Advertising in the form of vacation certificates or other promotions intended to induce prospective purchasers to visit the planned real estate development or retirement community that require the holders thereof to attend or submit to a sales promotion shall clearly and conspicuously state the necessity of attendance at or submission to the sales promotion and the approximate length of time required to be spent by the prospective purchaser at such sales promotion;

11. Any model unit that is used as a part of a promotional plan shall be in substantial conformity with the units that are subsequently constructed unless otherwise noted in the contract of sale. In the event changes are made in construction detail other than landscaping, or in the appliances, heating, air conditioning, electrical or plumbing systems, a legible notice shall be conspicuously placed in the model advising prospective purchasers of the change and explaining the details thereof;

12. In the event there are any items in the model that are available only at additional cost to the purchaser, legible notices informing prospective purchasers that the item is available only at additional cost should be posted in a prominent place in the model.

History

HISTORY:

Amended by R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

In (a), deleted and reserved 1, 10, 12, and 13.

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

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§ 5:26-6.1 General standards

All contracts or agreements for the disposition of a lot, parcel, unit or interest in a planned real estate development or retirement community shall be fair and reasonable and shall not impose undue restrictions or hardship upon the purchaser.

Annotations

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§ 5:26-6.2 Cancellation

Any contract or agreement for the purchase of any lot, parcel, unit or interest in a planned real estate development or retirement community may be cancelled without cause, by the purchaser, by sending or delivering written notice of cancellation by midnight of the seventh calendar day following the date on which such contract or agreement was executed.

History

HISTORY:

As amended, R.1981 d.130, eff. May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

"The purchaser has executed" deleted after "the date on which", and "was executed" added after "such contract or agreement".

Annotations

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Case Notes

Nonconforming actions did not satisfy statutory requirements. [Calvert v. K. Hovnanian at Galloway, VI, Inc., 128 N.J. 37, 607 A.2d 156 \(1992\)](#).

Statutory requirement explained. [Calvert v. K. Hovnanian at Galloway, VI, Inc., 128 N.J. 37, 607 A.2d 156 \(1992\)](#).

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§ 5:26-6.3 Notice of cancellation

Every contract or agreement shall contain the following notice in 10-point boldface type or larger, directly above the space provided for the signature of the purchaser.

NOTICE TO THE PURCHASER: YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT OR AGREEMENT BY SENDING OR DELIVERING WRITTEN NOTICE OF CANCELLATION TO THE DEVELOPER BY MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE DAY ON WHICH IT WAS EXECUTED. SUCH CANCELLATION IS WITHOUT PENALTY, AND ALL MONIES PAID BY YOU SHALL BE PROMPTLY REFUNDED IN THEIR ENTIRETY.

History

HISTORY:

As amended, R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

Amended notice.

Annotations

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Case Notes

Nonconforming actions do not satisfy statutory requirements. [Calvert v. K. Hovnanian at Galloway, VI, Inc., 128 N.J. 37, 607 A.2d 156 \(1992\).](#)

Statutory requirement explained. [Calvert v. K. Hovnanian at Galloway, VI, Inc., 128 N.J. 37, 607 A.2d 156 \(1992\)](#).

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[N.J.A.C. 5:26-6.4](#)

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§ 5:26-6.4 Deposits

All deposits, down payments, or other funds paid to a developer by a purchaser shall be held in a separate trust account in a banking or similar institution located within this State or deposited with any attorney licensed to practice law in this State, until closing or termination of the contract or until a bond or other guarantee acceptable to the Agency is provided. In no event shall the escrow be released before the expiration of the seven day rescission period.

Annotations

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Bankruptcy court rejected an insurer's claim that it was not liable under an agreement that guaranteed the performance of a developer's escrow agent to refund deposits which two purchasers paid to the developer and the developer failed to remit to the escrow agent. [N.J.S.A. 45:22A-22](#) and [N.J.A.C. 5:26-6.4](#) required the developer to place the deposits in an escrow account, the effect of the developer's failure to comply with state law was the absence of the deposits in the escrow agent's account for a period seven days, and that effect was too insignificant to deny return of the deposits. [Haspilaire v. Bond Safeguard Ins. Co. \(In re Kara Homes, Inc.\), 2008 Bankr. LEXIS 4828 \(2008\)](#).

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N.J.A.C. 5:26-6.5

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§ 5:26-6.5 Provisions prohibited

(a) It shall be unfair and unreasonable for any of the following clauses or provisions to appear in a contract or agreement for the disposition of a lot, parcel, unit or interest in a planned real estate development or retirement community:

- 1.A clause or provision necessitating the forfeiture of more than 10 percent of the purchase price plus the cost of any extras installed as liquidated damages in the event of non-compliance;
- 2.A clause or provision requiring the purchase to close prior to the issuance of a temporary certificate of occupancy on his unit;
- 3.A clause or provision requiring the purchaser to waive any right granted by the Act or this chapter;
- 4.A clause or provision requiring the purchaser to close prior to the date specified in the contract;
- 5.A clause or provision giving the developer the right of entry in, over or through the purchaser's lot, parcel, unit or interest after closing, other than for construction, repair, emergency matters or by governmental order or requirement;
- 6.A clause or provision permitting the substitution of materials or equipment by the developer that are not comparable without the prior written consent of the purchaser;
- 7.A clause or provision requiring the adjustment of taxes, municipal charges, utility rents, hazard insurance premiums, or any other adjustments as of any date other than closing or possession, whichever comes first;
- 8.A clause or provision giving the developer the right to increase the purchase price of the lot, parcel, unit or interest without requiring 60 days notice to the purchaser of the increase and without allowing the right of rescission within 10 days of said notice;
- 9.A clause or provision providing that a closing date may be delayed due to circumstances involving weather, strikes, lockouts or other labor disputes involving the developer or the suppliers, delays in the issuance of permits or inspections, or any other similar reasons unless there is a time limit placed on the permissible delay after which the purchaser may terminate the contract without penalty;
- 10.A clause or provision giving the developer, the association, the governing board of the association or their agents the option of repurchase, the right of first refusal or other similar option or right.

History

HISTORY:

As amended, R.1979 d.439, eff. November 1, 1979.

See: 11 New Jersey Register 497(a), 11 New Jersey Register 610(b).

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Regulation did not provide basis for statutory penalties. [Department of Community Affairs, Div. of Housing and Urban Development v. Atrium Palace Syndicate, 259 N.J.Super. 578, 614 A.2d 1069 \(A.D.1992\).](#)

Double damages and attorney fees could not be awarded administratively. [Department of Community Affairs, Div. of Housing and Urban Development v. Atrium Palace Syndicate, 259 N.J.Super. 578, 614 A.2d 1069 \(A.D.1992\).](#)

Certificate of occupancy must allow occupancy. [Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate, 247 N.J.Super. 511, 589 A.2d 1046 \(A.D.1991\),](#) certification denied 126 N.J. 338, 598 A.2d 895.

Certificate of Occupancy barring occupancy was null. [Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate, 247 N.J.Super. 511, 589 A.2d 1046 \(A.D.1991\),](#) certification denied 126 N.J. 338, 598 A.2d 895.

Condominium was not substantially complete and was not ready to be occupied. [Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate, 247 N.J.Super. 511, 589 A.2d 1046 \(A.D.1991\),](#) certification denied 126 N.J. 338, 598 A.2d 895.

Lack of timely performance requires deposit return. [Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate, 247 N.J.Super. 511, 589 A.2d 1046 \(A.D.1991\),](#) certification denied 126 N.J. 338, 598 A.2d 895.

Contractor bound to sales contract terms. [Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate, 244 N.J.Super. 329, 582 A.2d 821 \(A.D.1990\),](#) certification denied 126 N.J. 317, 598 A.2d 878.

Cancellation provisions must be mutual to be effective. [Becker v. Sunrise at Elkridge, 226 N.J.Super. 119, 543 A.2d 977 \(A.D.1988\),](#) certification denied 113 N.J. 356, 550 A.2d 465.

Research References & Practice Aids

LAW REVIEW AND JOURNAL COMMENTARIES:

Attorneys fees--Condominiums--Damages--DCA--PREDFDA. 132 N.J.L.J. No. 9, 45 (1992).

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[N.J.A.C. 5:26-6.6](#)

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§ 5:26-6.6 Mandatory provisions

(a) Every contract or agreement for the purchase of a lot, parcel, unit or interest in a planned real estate development or retirement community shall contain clauses and provisions to include the following, in addition to the requirement of notice of cancellation as in [N.J.A.C. 5:26-6.3](#):

- 1.A clause or provision providing that all deposits or money paid under the contract or agreement shall be held in escrow until closing or termination of the contract or agreement, or until a bond or other guarantee acceptable to the Agency is provided. There shall also be stated the name of the institution where the escrow account is located or name of the attorney in whose trust account the funds are deposited and the fact that the escrow will exist for at least the seven day rescission period;
- 2.A clause or provision that if the contract or agreement is subject to a mortgage contingency, the mortgage commitment be obtained within a specific period of time and if it is not obtained within that time, either party may cancel the contract or agreement upon written notice to the other, without penalty;
- 3.A clause or provision providing for the right of inspection by the purchaser of the lot, parcel, unit or interest prior to closing. Said inspection shall be within a reasonable period of time prior to closing;
- 4.A clause or provision providing reimbursement to the purchaser of the cost of title searches or surveys in the event title to a lot, parcel, unit or interest is found to be unmarketable;
- 5.A clause or provision that the purchaser is receiving a proportionate undivided interest in the common elements and/or facilities and stating what that interest is;
- 6.A clause or provision stating the type of deed to be given to the purchaser;
- 7.A statement, near the signature line, stating that the purchaser has received a copy of the public offering statement.

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Seller's failure to comply with statute not subject to lack of due care defense. [Enfield v. FWL, Inc., 256 N.J.Super. 502, 607 A.2d 685 \(Ch.1991\)](#), affirmed [256 N.J.Super. 466, 607 A.2d 666](#), certification denied 130 N.J. 9, 611 A.2d 648.

Rescission was not appropriate remedy where money damages were available. [Enfield v. FWL, Inc., 256 N.J.Super. 502, 607 A.2d 685 \(Ch.1991\)](#), affirmed [256 N.J.Super. 466, 607 A.2d 666](#), certification denied 130 N.J. 9, 611 A.2d 648.

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N.J.A.C. 5:26-7.1

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§ 5:26-7.1 Warranty on construction

(a)The developer of a planned real estate development or retirement community shall warrant the construction of the unit or interest as provided in the New Home Warranty and Builders' Registration Act, c.467, P.L. 1977.

(b)The developer of a planned real estate development or retirement community shall, in addition to the warranties required under the New Home Warranty and Builders' Registration Act (P.L. 1977, c.467), warrant the following to be free from defect due to material and workmanship for a period of one year from the date of possession or settlement: outbuildings, driveways, walkways, patios, retaining walls, and fences. The developer shall also warrant that all drainage is proper and adequate and that all off site improvements are free from defects for a period of one year from the date of construction.

(c)Developer shall warrant that all lots, parcels, units or interests are fit for their intended use.

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[N.J.A.C. 5:26-7.2](#)

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§ 5:26-7.2 Warranty on construction of common facilities

(a) The developer of a planned real estate development or retirement community shall warrant the construction of the common facilities for a period of two years from the date of the completion of each of the common facilities;

(b) The developer shall warrant that the common facilities are fit for their intended use;

(c) The developer shall repair or correct any defect in construction, material or workmanship in the common facilities within a reasonable time after notification of the defect.

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§ 5:26-7.3 Warranty as to description

The developer shall expressly warrant that any lot, parcel, unit, interest, or common facility will substantially conform to the model, description or plans used to induce the purchaser to enter into a contract or agreement to purchase unless noted otherwise in the contract.

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[N.J.A.C. 5:26-7.4](#)

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§ 5:26-7.4 Nonapplicability

The warranties contained herein are not applicable to conversions.

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[N.J.A.C. 5:26-8.1](#)

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§ 5:26-8.1 Formation of the association

(a) The developer shall form, or cause to be formed, an association whose obligation it shall be to manage the common elements and facilities.

1. An association may be formed as a for-profit or nonprofit corporation, unincorporated association, or any other form allowed by law.

(b) An association shall be formed on or before the filing of the master deed or declaration of covenants and restrictions.

A developer shall organize, or cause to be organized, an association whose obligation it shall be to manage the common elements and facilities. The association shall be formed on or before the filing of the master deed or declaration of covenants and restrictions and may be formed as a profit or nonprofit corporation, unincorporated association or any other form permitted by law.

History

HISTORY:

Amended by R.2020 d.056, effective May 18, 2020.

See: [51 N.J.R. 795\(a\)](#), [52 N.J.R. 1057\(a\)](#).

Section was "Creation". Rewrote the section.

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§ 5:26-8.2 Association powers and responsibilities

(a) Subject to the master deed, declaration of covenants, bylaws, and restrictions or other instruments of creation, the association may do all that it is legally entitled to do under the laws applicable to its form of organization. The executive board of the association may act in all instances on behalf of the association.

(b) The association shall discharge its powers in a manner that protects and furthers the health, safety and general welfare of the residents of the community.

(c) The association shall provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the association, and between different unit owners, that shall be readily available as an alternative to litigation.

(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.

1. 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.

(e) Members of the executive board appointed by the developer shall be liable as fiduciaries to the unit owners for their acts or omissions.

(f) During control of the executive board of the association by the developer, copies of the annual audit of association funds shall be available onsite for inspection and reproduction by owners and/or their authorized representatives.

History

HISTORY:

Amended by R.1987 d.291, effective July 20, 1987.

See: 19 N.J.R. 797(b), 19 N.J.R. 1291(d).

Added (b) and (c).

Amended by R.1993 d.522, effective November 1, 1993.

See: 25 N.J.R. 3693(b), 25 N.J.R. 4901(b).

Amended by R.1995 d.17, effective January 3, 1995.

See: 26 N.J.R. 4277(a), 27 N.J.R. 91(b).

Amended by R.2020 d.056, effective May 18, 2020.

See: [51 N.J.R. 795\(a\)](#), [52 N.J.R. 1057\(a\)](#).

Section was "Powers and duties". In (a), inserted ", bylaws," and added the second sentence; and added (e) and (f).

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§ 5:26-8.3 (Reserved)

History

HISTORY:

Repealed by R.2020 d.056, effective May 18, 2020.

See:

[51 N.J.R. 795\(a\)](#)

[52 N.J.R. 1057\(a\)](#)

Section was "Executive board".

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§ 5:26-8.4 Administration and control

(a) A developer who retains at least one unit as a rental unit shall not be entitled to an automatic seat on the executive board.

(b) A developer who has stopped selling units in the regular course of business shall not be entitled to an automatic seat on the executive board.

1. This shall not be construed to prevent a developer from being a candidate for a position on the executive board.

(c) Irrespective of the time set for developer control of the association provided in the master deed, covenants and restrictions or other instruments of creation, control of the association shall be surrendered to the owners in the following manner:

1. Sixty days after conveyance of 25 percent of the lots, parcels, units or interests, not less than 25 percent of the members of the executive board shall be elected by owners;

2. Sixty days after conveyance of 50 percent of the lots, parcels, units or interests, not less than 40 percent of the members of the executive board shall be elected by the owners;

3. Sixty days after conveyance of 75 percent of the lots, parcels, units or interests, the developer's control of the executive board shall terminate at which time the owners shall elect the entire executive board.

(d) Notwithstanding (c)1, 2, and 3 above, the developer may retain one member of the executive board so long as there are any units remaining unsold in the regular course of business.

(e) In calculating the above percentages, it is presumed that they are calculated on the basis of the entire number of units entitled to membership in the association.

(f) A developer may surrender control of the executive board of the association prior to the time as specified, provided the owners agree by a majority vote to assume control.

(g) Upon assumption by the owners of control of the executive board of the association, the developer shall forthwith deliver to the association all items and documents pertinent to the association such as, but not limited to a copy of the master deed, declaration of covenants and restrictions, documents of creation of the association, by-laws, minute book, including all minutes, any rules and regulations, an accounting of association funds, association funds, all personal property, insurance policies, government permits, a membership roster and all contracts and agreements relative to the association.

(h) The association, when controlled by the owners, shall not take any action that would be detrimental to the sales of units by the developer and shall continue the same level of maintenance, operation and services as immediately prior to their assumption of controls, until the last unit is sold.

(i) From the time of conveyance of 75 percent of the lots, parcels, units or interests, until the last lot, parcel, unit or interest in the development conveyed in the ordinary course of business the master deed, by-laws or

declaration of covenants and restrictions shall not require the affirmative vote of more than 75 percent of the votes to be cast in order to amend the by-laws or rules and regulations.

(j) The developer shall not be permitted to cast any votes allocated to unsold lots, parcels, units or interest in order to amend the master deed, by-laws or any other document for the purpose of changing the permitted use of a lot, parcel, unit or interest, or for the purpose of reducing the common elements or facilities.

History

HISTORY:

Amended by R.1979 d.439, effective November 1, 1979.

See: 11 N.J.R. 497(a), 11 N.J.R. 610(b).

Amended by R.1981 d.130, effective May 7, 1981.

See: 12 N.J.R. 631(b), 13 N.J.R. 259(a).

(h) added.

Amended by R.2020 d.056, effective May 18, 2020.

See: [51 N.J.R. 795\(a\)](#), [52 N.J.R. 1057\(a\)](#).

Added new (a) and (b); recodified former (a) through (h) as (c) through (j); and in (d), substituted "(c)1" for "(a)1" and inserted a comma following "2".

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In a suit wherein condominium unit owners sought control of the condominium association's governing board, the trial court erred by dismissing the unit owners' complaint for failure to state a cause of action because a majority vote of unit owners was not required to accept control of the association before the court was empowered to implement the transfer of control mandated by the New Jersey Condominium Act, [N.J.S.A. 46:8B-12.1\(a\)](#), for situations with a dormant developer. [Flinn v. Amboy Nat'l Bank, 436 N.J. Super. 274, 93 A.3d 422, 2014 N.J. Super. LEXIS 93 \(2014\)](#).

Condominium statute prevailed over any contrary provision in condominium association's master deed or bylaws. [Hill v. Cole, 248 N.J. Super. 677, 591 A.2d 1036 \(A.D.1991\)](#).

Where at least 75% of units were sold, statute prevented developer from voting unsold units. [Hill v. Cole, 248 N.J. Super. 677, 591 A.2d 1036 \(A.D.1991\)](#).

Failure to amend registration and public offering statement to disclose involvement in litigation warranted imposition of fines against developer. MGKB Financial Group v. Department of Community Affairs, 95 N.J.A.R.2d (CAF) 35.

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[N.J.A.C. 5:26-8.5](#)

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§ 5:26-8.5 Termination of agreements and contracts affecting common elements and facilities

Any contract or agreement affecting the use, maintenance, management or access of the common elements and facilities entered into between the developer and itself or a company owned, operated or controlled by the developer or in which it has a financial interest prior to the owners being entitled to elect a majority of the members of the board, shall not be entered into for a period in excess of one year. Such contracts or agreements shall not be renewed for periods in excess of one year and the association may, at the expiration of any one year period, terminate any further renewals or extensions thereof.

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§ 5:26-8.6 Assessments for common expenses

(a) Until such time as the association shall make an assessment for common expenses, the developer shall pay all of the expenses of the common elements and facilities.

(b) When the association has made a common expense assessment, the assessment shall be assessed against the units individually owned and under development in proportion to the benefit derived by the unit from the items included in the budget.

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Phantom condominium unit-owners may be liable for common area assessments. [Highpoint at Lakewood Condo. Ass'n v. Township of Lakewood, 442 N.J. Super. 123, 121 A.3d 413, 2015 N.J. Super. LEXIS 135 \(2015\).](#)

Condominium developer required to pay replacement reserve component of common expense assessment for unsold units not under construction. [Ocean Club Condominium Ass'n. v. Gardner, 318 N.J. Super. 237, 723 A.2d 623 \(A.D.1998\).](#)

Failure to amend registration and public offering statement to disclose involvement in litigation warranted imposition of fines against developer. MGKB Financial Group v. Department of Community Affairs, 95 N.J.A.R.2d (CAF) 35.

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§ 5:26-8.7 Budgets

(a) The association shall, prior to making an annual assessment, prepare and adopt an operating budget which shall provide for any and all common expenses to be incurred during the year as well as adequate reserves for repair and replacement of the common elements and facilities.

(b) No budget prepared by the developer or by the executive board while under the control of the developer shall contain any payment or subsidy by the developer that artificially influences the monthly assessment, unless the details are fully disclosed in the public offering statement to the satisfaction of the Agency.

(c) While the developer maintains a majority of the executive board, the executive board shall have an annual audit of association funds prepared by an independent public accountant, a copy of which shall be delivered to each unit owner within 90 days of the expiration of the fiscal year of the association. The audit shall cover the operating budget and reserve accounts.

(d) Until the expiration of any management contracts entered into while the developer maintains a majority of the executive board, the developer shall insure that a bond, or other guarantee acceptable to the Agency, is posted. For the first year of operation, the bond or other guarantee shall be in an amount equal to the annual budget. For the second year and for succeeding years, the bond or other guarantee shall be in an amount equal to the annual budget plus accumulated reserves. The developer shall provide the agency with such proof of such bond or other guarantee as may be necessary at the time of registration and annually thereafter.

History

HISTORY:

Amended by R.1983 d.576, effective December 19, 1983.

See: 15 New Jersey Register 1408(a), 15 New Jersey Register 2154(a).

Added (c) and (d).

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§ 5:26-8.8 Membership in the association

(a) Upon acceptance of a deed to the unit, each owner shall be an association member for so long as he or she holds title to the unit.

(b) The developer shall have one membership in the association for each unit registered pursuant to this chapter that has not been conveyed to an individual purchaser.

1. This subsection shall not be construed to provide the developer a different transition obligation than that required pursuant to Section 5 of P.L. 1993, c. 30 ([N.J.S.A. 45:22A-47](#)).

(c) An association member shall be considered to be in good standing with respect to eligibility to vote in executive board elections, vote to amend bylaws, and nominate or be a candidate for a position on the executive board when the association member:

1. Is current in the payment of common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed;
2. Is in compliance with a judgement for common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed;
3. Is in full compliance with a settlement agreement with respect to the payments of assessments, legal fees, or other charges lawfully assessed; or
4. Has requested or is participating in Alternative Dispute Resolution (ADR) or in a court proceeding for a dispute over a matter that affects the owner's good standing.

(d) The bylaws may allow tenants to vote in executive board elections and may allow tenant membership in the association, but to do so, the bylaws shall provide that the tenant can vote or be a member in the association only with the consent of the owner of the unit the tenant is leasing.

1. When the association has allowed tenant voting as a standard practice, such practice may continue, subject to the consent of the owner from whom the tenant is leasing a unit.
2. The bylaws may allow the owner to designate the tenant as a voting eligible tenant. Such designation shall be in writing and may include a clause in the written lease agreement or another written document. An owner may allow the tenant to vote as the owner's agent through a proxy or power of attorney.
3. A voting eligible tenant shall have the same voting rights as the owner of the unit that the tenant leases. Such voting rights shall be in place of, and not in addition to, the rights of the owner of the leased unit.
4. An owner who is not in good standing is not allowed to empower a tenant or any other person to vote in his or her stead.

History

HISTORY:

New Rule, R.2020 d.056, effective May 18, 2020.

See:

[51 N.J.R. 795\(a\)](#) ,

[52 N.J.R. 1057\(a\)](#) .

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N.J.A.C. 5:26-8.9

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NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 26. PLANNED REAL ESTATE DEVELOPMENT FULL DISCLOSURE ACT REGULATIONS > SUBCHAPTER 8. COMMUNITY ASSOCIATIONS

§ 5:26-8.9 Executive board elections

(a) The executive board shall be elected by association members and voting eligible tenants.

1. The developer shall not be entitled to cast votes in any executive board elections while the developer maintains a seat or seats on the board pursuant to Section 5 of P.L. 1993, c. 30 ([N.J.S.A. 45:22A-47](#)).

(b) The association shall hold executive board elections in accordance with the provisions of its bylaws, including validly adopted executive board rules.

1. Elections shall be held every two years, unless the association bylaws set a different time or interval for elections, which shall not exceed four years.

2. Associations shall set the term of an executive board member for a maximum of four years. This section shall not prohibit the association from staggering elections, so as to provide for a continuum of experienced members on the board.

3. If the association has not held an election in compliance with its bylaws, owners may submit a petition to any board member to compel an election.

i. Such petition shall be signed by a minimum of 25 percent of association members in good standing, unless the governing documents designate a larger percentage as the quorum for elections.

ii. The executive board shall hold an election within 90 days upon receipt of such petition.

(c) If the association has no executive board members and association members fail to act on petition or by majority, any association member or group, at common expense and upon written notice to all owners, may petition a court with jurisdiction for authority to act temporarily in the interests of the association and to organize and hold an election within 90 days of the court order.

(d) The use of proxies and absentee ballots for executive board elections shall be governed by this subsection.

1. Any proxies used by the association shall contain a clear and prominent notice that use of the proxy is voluntary on the part of the granting owner.

2. The proxy may be revoked at any time before the proxy holder casts a vote.

3. If the association allows the use of proxies, it shall also make absentee ballots available.

(e) Each unit shall be allocated either one vote or an equal number of votes per unit, unless the governing documents of the association allow for voting proportional to a unit's value or size. These allocations shall be consistent such that all owners of units of the same value or size shall have the same number of votes.

(f) The association shall not prohibit, limit, impede, or restrict participation by residents of low- or moderate-income housing units. No association election procedure shall impose any requirement for voting on low- or moderate-income housing owners that would interfere with their right to vote.

(g)The association shall not prohibit, limit, impede, or restrict members in good standing, proxy holders, individuals acting pursuant to a valid power of attorney, or voting eligible tenants, as applicable, from voting for any candidate in an executive board election.

- 1.If allowed by the bylaws of the association, a voting eligible tenant shall not be prohibited from voting.
- 2.If electronic voting is permitted, anyone eligible to vote shall be permitted to cast votes electronically, so long as the electronic ballot is administered in accordance with (h) below.

(h)The association shall verify the eligibility of the voters and count the ballots in a non-fraudulent and verifiable way.

- 1.Any depository for physical ballots shall be secured.
- 2.All ballot tallying shall occur publicly, and the ballots shall be open to inspection by any member of the association for a period of 90 days from the date of the election.
- 3.All ballots shall be cast in an anonymous manner.
- 4.If the bylaws permit, and the association member consents, a ballot may be cast electronically if it is administered by a neutral third party and anonymity is maintained.

(i)Initial executive board elections in condominium associations governed under the Condominium Act, P.L. 1969, c. 257 ([N.J.S.A. 46:8B-1](#) et seq.), shall follow the notice timeline under Subsection b. of Section 2 of P.L. 1979, c. 157 ([N.J.S.A. 46:8B-12.1](#)), and shall not be subject to this section.

(j)When independent associations with residential units share facilities or obligations that require them to be members of a master or umbrella association board to oversee those facilities or obligations, the members of the independent association shall, unless the independent associations' governing documents provide for such association to appoint a member to the master or umbrella association, elect representatives to the master or umbrella association in accordance with this section.

(k)Associations with fewer than 50 units shall be governed by (a) through (j) above and by the following:

- 1.The association shall provide written notice of the election not fewer than 14 calendar days and not more than 30 calendar days prior to the date of the election. Such notice shall provide access to information on when and how to vote.
- 2.All association members may nominate any member for candidacy, including self-nomination. The association shall ensure that all nominees are in good standing. Good standing shall be the sole criterion for the eligibility of a nominee.
- 3.The association shall provide its members the opportunity to review the qualifications of the candidates who are running for election to the board.
 - i.Provisions for write-in candidates may be established in the bylaws of the association. In the event a write-in candidate receives sufficient votes to be elected but is not eligible, such candidate shall not be deemed to have been elected. If this results in a vacancy on the board, the eligible candidate receiving the next highest number of votes shall be deemed to have been elected.
- 4.A minimum of 14 days prior to the election, the association shall notify any resident who is not in good standing. The notice shall state the reason the resident is not in good standing. The notice shall state that the resident has the right to contest the board's determination by requesting Alternative Dispute Resolution.

(l)Associations with 50 or more units shall be governed by (a) through (j) above and by the following:

- 1.Any election meeting held by the executive board shall require both a notice calling for nominations and a notice of election.

i. The association shall provide written notice calling for nominations to all members not fewer than 30 calendar days and not more than 60 calendar days prior to mailing the election meeting notice informing them of the right to nominate themselves or other members in good standing as candidates for the executive board. Such notice shall specify the process for submitting nominations.

ii. Association members shall have a minimum of 14 days from the mailing of the request for nomination during which they may submit their nominations to the board president or otherwise as provided in the association's bylaws. The deadline shall be provided in the notice.

(1) When the association has not set a deadline, nominations of members in good standing shall be deemed valid until one business day prior to the mailing of the notice of election. Good standing shall be the sole criterion for the eligibility of a nominee.

(2) The association shall not mail out ballots or proxies until the day following the expiration of the nomination period.

(3) Nothing in this subsection shall prevent members in good standing from writing in eligible candidates on the day of the election pursuant to (1)iv(6) below.

iii. Following the nomination period, a notice of election shall be sent to all association members. This notice shall be in writing and may be made by personal delivery, by mail, or electronically. It shall be sent not fewer than 14 days and not more than 60 days prior to the date of the election.

(1) In the case of mailing, the notice shall be effective when deposited in the mailbox with proper postage.

(2) In the case of personal delivery, the notice shall be effective the date it is delivered. The executive board shall sign and maintain a record attesting to the date the notice was delivered.

(3) In the case of electronic delivery, the notice shall be effective the date of the electronic record. The notice may only be sent by electronic means when the affected association member or voting eligible tenant has agreed in writing to accept the notice by electronic means or when the governing documents permit electronic notices, provided another form of voting by absentee balloting or proxy voting is available.

iv. The election meeting notice shall contain a copy of the ballot.

(1) If the bylaws permit, the notice shall include an absentee ballot with instructions for returning the ballot. If the bylaws provide for a proxy ballot, an absentee ballot shall also be included.

(2) The ballot shall contain the names of all persons nominated and found to be in good standing as candidates for the executive board in alphabetical order by last name.

(3) The ballot shall not indicate incumbent board members.

(4) The ballot shall list each candidate's name in the same font, in the same size, and in the same font color.

(5) When an election is for a specific board position, the ballot shall indicate what office and term each candidate is seeking.

(6) The ballot shall include space for write-in candidates for as many seats as are up for election. In the event a write-in candidate receives sufficient votes to be elected but is not eligible, such candidate shall not be deemed to have been elected. If this results in a vacancy on the board, the eligible candidate receiving the next highest number of votes shall be deemed to have been elected.

v. A minimum of 30 days prior to the election, the association shall notify residents who are not in good standing. Such notice shall state the reason why the resident is not in good standing. The notice shall state that residents have the right to contest the board's determination by requesting

Alternative Dispute Resolution. Residents shall be allowed to rectify their standing up until five business days prior to the election date.

History

HISTORY:

New Rule, R.2020 d.056, effective May 18, 2020.

See:

[51 N.J.R. 795\(a\)](#) ,

[52 N.J.R. 1057\(a\)](#) .

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N.J.A.C. 5:26-8.10

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§ 5:26-8.10 Representation

(a) The association bylaws may provide for representation on the executive board for owners with different unit types. Such owners shall be afforded the right to nominate members of the executive board to ensure representation of their unit types on the board.

1. Different unit types shall include units of different value, size, nature, or geographical area within the development, based on the number of units in a category to ensure representation on the board for that type.

2. When affordable units, in accordance with the New Jersey Fair Housing Act, [N.J.S.A. 52:27D-304](#), 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.

3. Regardless of their number or value, owners of commercial units in the development shall not constitute a majority of the executive board.

(b) Unless executive board members are serving as representatives of the developer during the period prior to surrender of control to the owners, not more than one resident from a single unit shall serve on the executive board simultaneously with another resident of the same unit.

(c) A person or owning entity shall not hold more than one seat on the executive board.

History

HISTORY:

New Rule, R.2020 d.056, effective May 18, 2020.

See:

[51 N.J.R. 795\(a\)](#)

[52 N.J.R. 1057\(a\)](#)

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§ 5:26-8.11 Appointments, removals, and executive board vacancies

(a) Elections shall comply with State laws and the bylaws of the association.

(b) A board member shall be removed only in accordance with the bylaws or by the board for good cause directly impacting the member's ability to serve.

1. The board shall not remove an elected member for disagreeing with the majority or for violating any confidentiality agreement without affording the elected member Alternative Dispute Resolution (ADR) in which the ADR provider concludes from substantial credible evidence that there was a breach that adversely affected the interests of the association members as opposed to that of the executive board.

(c) In associations with 50 or more units, the board shall not appoint, and a designee shall not accept, an executive position through appointment except as provided in (c)3 below.

1. An extension of an existing term by the board shall be deemed equivalent to an appointment and shall be prohibited.

2. This subsection shall not apply to any permissible appointment made by the developer pursuant to Section 5 of P.L. 1993, c. 30 ([N.J.S.A. 45:22A-47](#)).

3. This subsection shall not prevent the association from filling a vacancy in the executive board created by resignation, death, or failure to maintain reasonable qualification to be an executive board member, including maintaining good standing, or following a vote in favor of removal open to all association members in accordance with the terms of the bylaws. Any executive board position that has been filled by an appointee in such instances shall be subject to election within a year following such appointment.

(d) Association members may initiate removal of a board member who was elected by the unit owners by submitting to the board a petition signed by 51 percent of association members for removal of that board member.

1. A special election of the association membership shall be held within 60 days of receipt of the petition.

2. When the annual meeting of the association membership is scheduled to occur within 60 days of the submission of the petition, then the election shall be held at the annual meeting.

(e) Notice of the special election meeting shall be provided to all association members and voting eligible tenants at least 14 days prior to the date of the meeting.

1. The meeting shall be scheduled at a reasonable date and time of day to allow most association members to attend.

2. The ballot shall be drafted in accordance with [N.J.A.C. 5:26-8.9](#) (j)1iv.

3. At least 14 days prior to the meeting, the ballot shall be mailed, hand delivered, or if bylaws permit, and the owner consents, electronically delivered to all association members together with the notice of the meeting.

4. If the bylaws permit, the notice of the meeting shall include an absentee ballot with instructions for returning the ballot. If the bylaws provide for a proxy ballot, an absentee ballot shall also be included.

i. The instructions shall allow return of the proxy or absentee ballot by facsimile or electronic means and shall not require receipt of the ballot more than one business day prior to the meeting.

History

HISTORY:

New Rule, R.2020 d.056, effective May 18, 2020.

See:

[51 N.J.R. 795\(a\)](#)

[52 N.J.R. 1057\(a\)](#)

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N.J.A.C. 5:26-8.12

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§ 5:26-8.12 Open meetings

(a)The bylaws of the association shall include a requirement that meetings of the executive board where a binding vote of the executive board is to be taken shall be open to attendance by all association members and voting-eligible tenants, as applicable.

- 1.A binding vote is a vote made with a quorum of the executive board members present.
- 2.The board shall provide a brief explanation of the basis for and cost entailed in the matter that is the subject of any binding vote and include the explanation in the minutes for the meeting.
- 3.Associations may adopt a policy for comments by association members and voting eligible tenants during meetings. Such policy shall be applied uniformly.

(b)The association shall hold an annual meeting. Within seven days following the annual association meeting, the association shall post, and maintain posted throughout the year, an open meeting schedule of the executive board.

- 1.Such open meeting schedule shall be posted at the place or places at which notices are posted pursuant to (c) below and filed with the board member designated for administering association business.
- 2.The open meeting schedule shall contain the time, date, and locations of such meetings.
- 3.Any changes to the posted open meeting schedule shall be made at least seven days prior to the scheduled date and posted and maintained in the same manner as the original schedule.

(c)In addition to the posted open meeting schedule, adequate notice of at least seven days prior to any such meeting shall be given to all association members and voting eligible tenants, as applicable.

- 1.Such notice shall be provided as follows:
 - i.The notice shall be prominently posted in at least one place on the property that is accessible to all owners at all times;
 - ii.The notice shall be posted on the association's website and included in any association newsletter; or
 - iii.The notice shall be personally provided to each member or designee by mail, hand-delivery, or electronic means.
- 2.The notice shall be filed with the board member designated as responsible for administering association business. It shall be maintained by the executive board for a period of two years.
- 3.The notice shall include the following details:
 - i.The time, date, and location of the meeting;

ii. Agenda items to the extent known, which shall include items for discussion, items for action, and reoccurring items, such as passage of a budget.

4. An individual association member or designee may provide written notice to the board waiving any personal delivery of meeting notices. Such member or designee may rescind such waiver at any time by written notification to the board. Notwithstanding the meeting notice waiver, the member or designee shall be entitled to open meeting minutes as provided in (f) below.

(d) Every elected board member shall be provided equal opportunity to participate in any meeting of board members.

(e) The executive board may exclude attendance of all association members and voting eligible tenants at meetings, or portions of a meeting.

1. The exclusion under (e) above shall only be for discussion of any matters listed in this paragraph:

i. Those in which disclosure would constitute an unwarranted invasion of individual privacy;

ii. Pending or anticipated litigation or contract negotiations;

iii. Those involving employment, promotion, discipline, or dismissal of a specific employee or officer of the association; and/or

iv. Those falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his or her ethical duties as a lawyer.

2. A vote taken at a closed meeting shall not be binding. If the matter requires a binding vote, it shall be taken at a subsequent open meeting in a manner that does not disclose any confidences.

3. If the closed meeting is to be part of an open meeting, the closed portion shall be convened either before the open portion or at the end of the open meeting portion of the agenda.

(f) Minutes for the open sessions of meetings shall be taken for each meeting.

1. The minutes shall be legible.

2. The minutes shall include the board members present and their titles.

3. The minutes shall include clear identification of any matters addressed.

4. The minutes shall include clear identification of any matters voted on at the meeting, a record of the votes, and a brief explanation of the basis for and cost entailed in the matter which is the subject of the vote.

5. The minutes shall be made available to association members in a timely manner before the next meeting and may be identified as "draft" or "unapproved."

6. If a meeting is recorded electronically, a written record shall be taken of the matters addressed and the matters voted on. Association members shall have access to the electronic recording, as well as the written record, including the right to make a copy of electronic or written records.

(g) When a meeting of the executive board is required to deal with matters of such urgency and importance that delay for the purpose of providing seven days advance notice would be likely to result in substantial harm to the interests of the association and provided that the meeting is limited to discussion of, and acting with respect to, such matters of urgency and importance, notice of the emergency meeting shall be deemed to be adequate if it is provided as soon as possible following the calling of the meeting by posting in accordance with (c) above.

1. The executive board shall maintain, on the record, the facts establishing the emergency and any prior knowledge of the condition.

2. Minutes for emergency meetings shall be taken and made available to members of the association in accordance with (f) above.

(h)When the board has determined to cancel a scheduled open meeting, it shall post notice of the cancellation at the meeting site by the time the meeting is scheduled to begin. The Board shall promptly post the notice of cancellation at the location on the property where notices are posted and, if applicable, its website.

- 1.The notice shall state when the meeting will be held and the reason for the cancellation.
- 2.If the start time is delayed, notice of the new time shall be posted at the meeting site to provide notice of the delay to those attending.

History

HISTORY:

New Rule, R.2020 d.056, effective May 18, 2020.

See:

[51 N.J.R. 795\(a\)](#)
[52 N.J.R. 1057\(a\)](#)

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N.J.A.C. 5:26-8.13

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§ 5:26-8.13 Amendments to the bylaws

(a)The bylaws shall detail the method in which the bylaws may be amended.

(b)No amendments to the bylaws shall be effective until they are recorded in the same county Clerk's Office as the existing bylaws.

1.The amendments to the bylaws shall be recorded in the same county Clerk's Office as the existing bylaws in a timely manner.

2.In order to enforce the bylaws and any amendments thereto, any association that has not previously recorded its bylaws, shall record the bylaws and any amendments in the Clerk's Office of the county in which the property is located.

3.The association shall maintain a record of the filing, which shall be available to any owner, or designee, upon request.

(c)If the bylaws do not provide an amendment method by a vote of association members that is open to all association members, or if they provide for an amendment by more than a two-thirds majority, the association members may amend the bylaws by a vote of the majority of the total authorized votes in the association.

(d)The majority shall be determined based on association membership in good standing at the time of the vote.

(e)If the bylaws do not provide a method through which association members may call a meeting of association members to conduct a bylaws amendment vote or a vote concerning the provisions of

[N.J.A.C. 5:26-8.10](#),

[8.11](#), and

[8.12](#), the method shall be as follows:

1.A petition shall be signed and submitted to the executive board by not less than 15 percent of the association members to request a special meeting;

2.A special meeting of the association membership shall be held within 60 days of receipt of the request; and

3.If the annual meeting of association membership is scheduled to occur within 60 days of the request, the amendment vote shall be held at that meeting.

(f)Notice of the meeting to amend the bylaws, as set forth in this subsection, shall be provided to all association members and voting eligible tenants at least 14 days prior to the date of the meeting.

1.Such notice shall prominently state that it is for a proposed amendment to the bylaws and include a copy of the proposed language.

2.The amendment shall be drafted in clear language and in a manner that is consistent with the association's bylaws and applicable laws.

3.The amendment shall be mailed, hand delivered, or if bylaws permit, electronically delivered together with the notice of the meeting at least 14 days prior to the meeting.

4.If the bylaws permit, the notice of the meeting shall include an absentee ballot with instructions for returning the ballot. If the bylaws provide for a proxy ballot, an absentee ballot shall also be included. The instructions shall allow return of the proxy or absentee ballot by facsimile or electronic means provided that such return protects the anonymity of the voter. The association shall not require receipt of the ballot more than one business day prior to the meeting.

(g)If an insufficient number of ballots or proxies are received at the special meeting to determine whether the proposed amendment has been approved or rejected, then the meeting shall be adjourned for 30 days or longer as approved by the association membership.

1.The bylaws of the association shall provide for the percentage of association members required to determine the period of adjournment.

2.The period between the original special meeting and the next special meeting for the amendments to the bylaws shall not be longer than 11 months from the date the notice of the meeting was sent.

3.If the proxies or ballots received prior to the extension date are valid under the bylaws, then they remain valid for the upcoming special meeting.

(h)An amendment proposed by the association board shall be considered defeated if, when the association board provided notice to all association members of the proposed amendment, a ballot to reject the amendment was included and at least 10 percent of the association members in good standing voted to reject the amendment within 30 days of the mailing.

1.The board's proposed amendment shall include a notice that the amendment will fail only if at least 10 percent of the association members in good standing vote to reject the amendment.

(i)When an amendment is approved, a copy shall be provided to all association members and the association shall record it in the county recording office where the bylaws were originally recorded, or in the county recording office where the property is situated where the bylaws have not been previously recorded.

(j)An executive board shall not amend the bylaws without a vote open to all association members or as detailed above except to the extent necessary to render the bylaws consistent with State, Federal, or local law.

History

HISTORY:

New Rule, R.2020 d.056, effective May 18, 2020.

See:

[51 N.J.R. 795\(a\)](#)

[52 N.J.R. 1057\(a\)](#)

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N.J.A.C. 5:26-8.14

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§ 5:26-8.14 Complaints and penalties

(a) Any unit owner may file a complaint with the Department concerning any matter subject to the rules at [N.J.A.C. 5:26-8.8](#) through [8.13](#).

1. Such complaint shall be in writing and shall be on a form approved by the Department for this purpose. It may be submitted electronically through the Bureau's website, mailed to the address below, or submitted by fax. Physical copies of the required complaint form may be downloaded at (website to be added upon adoption) or requested through the Department at:

Association Regulation Unit
101 South Broad Street
Post Office Box 805
Trenton, New Jersey 08625
Telephone: 609-984-7574
Fax: 609-292-2839

2. The complaint shall include a clear, factual statement of the issue and shall include any applicable documentation to support such statement. The Department shall not conduct a review until the complaint is complete.

3. The complaint must be submitted at least ten business days prior to any scheduled upcoming election in order for the Department to issue any relief as to that election. Upon receipt of the complaint, the Department shall complete a review of the complaint and make a determination of the appropriate action as set forth in (e) below.

(b) The Department shall review and evaluate the complaint to ensure compliance with this subchapter. The Department may be in contact with the association and unit owners for clarification of any matter disclosed in the complaint.

1. Upon receipt of the complaint, the Department shall make a determination as to whether relief may be enacted for the immediate upcoming election or will apply to prospective elections. The Department shall so inform the complainant.

2. Upon completion of the review, the Department shall provide a report to the complainant as to the actions taken in regard to the complaint.

(c) Nothing in this section shall prevent the Department from instituting an investigation on its own initiative.

(d) Unit owners who believe that the association is acting contrary to this chapter or any applicable law, may petition a court of competent jurisdiction for relief at any time without filing a complaint with the Department.

1. When a complaint is filed in a court of competent jurisdiction, the Department shall be provided with a filed copy and then the Department shall hold its action in abeyance pending the court decision.

(e) The Department may levy and collect fines and may issue penalties as set forth in N.J.A.C. 5:26-11

1. For associations that are controlled by unit owners, the Department may issue cease and desist orders, may issue a monetary penalty, may transmit the case to the Office of Administrative Law, or may file an action in the Superior Court.

2. In addition to the penalties listed above, for associations that are controlled by the developer, the Department may issue a revocation of registration.

History

HISTORY:

New Rule, R.2020 d.056, effective May 18, 2020.

See:

[51 N.J.R. 795\(a\)](#)

[52 N.J.R. 1057\(a\)](#)

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[N.J.A.C. 5:26-9.1](#)

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NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 26. PLANNED REAL ESTATE DEVELOPMENT FULL DISCLOSURE ACT REGULATIONS > SUBCHAPTER 9. CONVERSIONS

§ 5:26-9.1 Requirements

(a) In addition to the requirements set forth in [N.J.A.C. 5:26-4.2](#) (Contents of public offering statement), the developer shall, in the case of conversion from a residential rental or hotel use to a condominium, cooperative, time-sharing venture, or other planned real estate development, include in the public offering statement the following information:

1. The price at which the lot, parcel, unit or interest will be offered;
2. An audited statement of expenses for the property for the past five years or for a shorter period as permitted by the Agency due to extenuating circumstances, certified by an independent public account;
3. An engineering survey, in the form set forth in the appendix, prepared by a licensed professional engineer, which shall include mechanical, structural, electrical and engineering reports to disclose the condition of the building, as well as an energy audit, in a form approved by the Agency, setting forth the energy efficiency of the building.
 - i. The engineer who prepares the survey shall certify to the Agency whether, in his or her judgment, the building is in compliance with the code standards adopted under the Hotel and Multiple Dwelling Law and set forth at [N.J.A.C. 5:10](#) and with the code standards adopted under the Uniform Fire Safety Act and set forth at [N.J.A.C. 5:18](#), and shall list all outstanding violations then existing in accordance with his or her observation and judgment.
 - ii. As provided by P.L. 1991, c.509, the engineer shall be immune from tort liability with regard to such certification and list in the same manner, and to the same extent, as if he or she were a public employee protected by the New Jersey Tort Claims Act.
 - iii. As further provided in P.L. 1991, c.509, in the event of any discrepancy between the engineering survey submitted by the developer and an engineering survey submitted by any tenant(s), the Agency may have another engineering survey done for it at the developer's sole cost and expense.
4. A statement of the effect on prospective owners of the New Jersey Statute Governing Removal of Tenants ([N.J.S.A. 2A:18-61.1](#) et seq.), the Senior Citizens and Disabled Protected Tenancy Act ([N.J.S.A. 2A:18-61.22](#) et seq.) and, if the building is located in Hudson County, the Tenant Protection Act of 1992 ([N.J.S.A. 2A:18-61.40](#) et seq.), and the rules promulgated thereunder at [N.J.A.C. 5:24](#).

History

HISTORY:

Amended by R.1981 d.130, effective May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

(a)2: "the period if ownership, whichever is less or" deleted after "for the past five years or" and conjunction "and" deleted between (a)2 and (a)3.

Amended by R.1983 d.446, effective October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

In (a)3, added energy audit report to be included.

Amended by R.1992 d.287, effective July 6, 1992.

See: 24 New Jersey Register 1453(a), 24 New Jersey Register 2429(a).

Engineering survey provisions added at (a)3i-iii; references to statute added at (a)4.

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

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Purchaser's lack of due care not defense to statutory action. [Enfield v. FWL, Inc., 256 N.J.Super. 502, 607 A.2d 685 \(Ch.1991\)](#), affirmed [256 N.J.Super. 466, 607 A.2d 666](#), certification denied [130 N.J. 9, 611 A.2d 648](#).

Conversion moratorium ordinance invalid as preempted by State legislation. [Plaza Joint Venture v. Atlantic City, 174 N.J.Super. 231, 416 A.2d 71 \(App.Div.1980\)](#).

Municipalities cannot regulate conversion of residential rental units into cooperatives and condominiums; preemption doctrine. [Hampshire House Sponsor Corp. v. Fort Lee, 172 N.J.Super. 426, 412 A.2d 816 \(Law Div.1979\)](#).

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[N.J.A.C. 5:26-9.2](#)

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§ 5:26-9.2 Compliance with statutes and rules governing tenant removal and protected tenancy

(a) The developer shall conform to the requirements of the New Jersey Statute Governing Removal of Tenants, P.L. 1974, c.49 and P.L. 1977, c.419 ([N.J.S.A. 2A:18-61.1](#) et seq.) and the rules promulgated thereunder at [N.J.A.C. 5:24-1.1](#) et seq.

(b) The developer shall conform to the requirements set forth in the Senior Citizens and Disabled Protected Tenancy Act, P.L. 1981, c.226 ([N.J.S.A. 2A:18-61.22](#) et seq.) and the rules promulgated thereunder at [N.J.A.C. 5:24-2.1](#) et seq.

(c) If the building is located in Hudson County, the developer shall conform to the requirements of the Tenant Protection Act of 1992, P.L. 1991, c.509 ([N.J.S.A. 2A:18-61.40](#) et seq.) and the rules promulgated thereunder at N.J.A.C. 5:24-3.

History

HISTORY:

Amended by R.1992 d.287, effective July 6, 1992.

See: 24 New Jersey Register 1453(a), 24 New Jersey Register 2429(a).

References to statutes added.

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Registration of condominium's public offering statement did not preclude court review. [809-811 Washington Street Associates v. Grego, 253 N.J.Super. 34, 600 A.2d 1222 \(A.D.1992\).](#)

Agency approval regarding one statute did not express compliance with different statute. [809-811 Washington Street Associates v. Grego, 253 N.J.Super. 34, 600 A.2d 1222 \(A.D.1992\).](#)

Full and complete statutory and regulatory compliance is required for developers of condominiums to convert rental property to condominium ownership. [Market Dundee Corp. v. Jaramillo, 244 N.J.Super. 385, 582 A.2d 850 \(L.1990\).](#)

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§ 5:26-9.3 Public Offering Statement

(a) Simultaneously with the filing of an application for registration with the Agency, the developer shall serve upon all tenants in the building a copy of the proposed Public Offering Statement and file an affidavit of service with the Agency within 10 days.

1. The proposed Public Offering Statement that is given to the tenants shall contain the following statement on the first page:

THIS IS THE PROPOSED PUBLIC OFFERING STATEMENT SUBMITTED TO THE DIVISION OF CODES AND STANDARDS, DEPARTMENT OF COMMUNITY AFFAIRS, IN AN APPLICATION FOR REGISTRATION TO CONVERT THE BUILDING TO A CONDOMINIUM OR COOPERATIVE. THIS STATEMENT IS SUBJECT TO CHANGE. THE DEPARTMENT OF COMMUNITY AFFAIRS WILL ACCEPT WRITTEN COMMENTS CONCERNING THIS STATEMENT FOR A PERIOD OF 45 DAYS. ALL COMMENTS SHOULD BE ADDRESSED TO:

Department of Community Affairs
Planned Real Estate Development Section
Bureau of Homeowner Protection
PO Box 805
Trenton, New Jersey 08625-0805

THIS DOCUMENT IS NOT THE FULL PLAN OF INTENTION TO CONVERT AND FULL PLAN OF CONVERSION REQUIRED UNDER THE NEW JERSEY STATUTE GOVERNING REMOVAL OF TENANTS ([N.J.S.A. 2A:18-61.1](#) et seq.)

History

HISTORY:

As amended, R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

Amended statement.

As amended, R.1984 d.434, eff. October 1, 1984.

See: 16 New Jersey Register 2032(a), 16 New Jersey Register 2522(a).

Added "and development".

Amended by R.1990 d.452, effective September 4, 1990.

See: 22 New Jersey Register 1702(a), 22 New Jersey Register 2682(b).

Stylistic changes.

Amended by R.2001 d.48, effective February 5, 2001.

See: [32 New Jersey Register 1272\(a\)](#), [33 New Jersey Register 550\(c\)](#).

In (a)1, substituted "CODES AND STANDARDS" for "HOUSING AND DEVELOPMENT".

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[N.J.A.C. 5:26-10.1](#)

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§ 5:26-10.1 Scope

Upon application to and registration by the Agency as provided below, a developer may accept a nominal sum, not to exceed \$ 2,500, which sum shall be held in trust, as a nonbinding reservation for the purpose of determining the market demand for a planned real estate development or retirement community, and shall not be deemed to be an offer or disposition of an interest therein, provided that the developer shall do so under the terms and conditions contained in this subchapter.

History

HISTORY:

As amended, R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

Increased sum which developer may accept from \$ 250.00 to \$ 2,500.

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§ 5:26-10.2 Application

(a) Prior to accepting any nonbinding reservation agreements, the developer shall submit an application to the Agency for registration that contains the following information:

1. The name and address of the developer;
2. The location and description of the lands to be developed;
3. The number and types of lots, parcels, units or interests to be contained in the planned real estate development or retirement community as well as a description of the common elements and facilities;
4. The selling price at which each lot, parcel, unit or interest will be offered, together with a general description of the lot, parcel, unit or interest offered at that price and the estimated monthly assessment;
5. The name and address of the person or firm holding the deposits and the name and location of the banking or similar institution wherein the deposits will be deposited;
6. A statement that no lot, parcel, unit or interest will be sold and that no binding agreement will be offered or accepted thereon until the planned real estate development or retirement community is registered with the Agency according to the provisions of this chapter;
7. A copy of the most recent financial statement of the developer, certified to be true and accurate by an independent public accountant;
8. A copy of all advertising material;
9. A copy of the proposed reservation agreement form;
10. Any other material deemed necessary by the Agency in furtherance of the provisions of this chapter.

(b) The application shall be accompanied by a filing fee in the amount of \$ 250.00.

History

HISTORY:

As amended, R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

Added (b).

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[N.J.A.C. 5:26-10.3](#)

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§ 5:26-10.3 Advertising standards

(a) All advertising material shall conform to the provisions of N.J.A.C. 5:26-5 and in addition shall contain the following:

1. A statement that the purpose of the advertising is to solicit nonbinding reservations;
2. A statement that the nonbinding reservation is not a contract and may be cancelled by the prospective purchaser at any time, without cause;
3. A statement that any money paid to the developer shall be refunded to the prospective purchaser upon request and cancellation of the nonbinding reservation.

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[N.J.A.C. 5:26-10.4](#)

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§ 5:26-10.4 Approval of advertising

(a) Prior to the developer using any advertising for nonbinding reservations, it shall be submitted to the Agency for review, and shall be reviewed by the Agency within 30 days.

(b) Upon the affirmative determination of the Agency that the advertising material meets the requirements of N.J.A.C. 5:26-5 and [N.J.A.C. 5:26-10.3](#), the Agency shall notify the developer of such determination.

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§ 5:26-10.5 Reservation form

(a) Every developer accepting any nonbinding reservation agreement shall give a reservation form to all prospective purchasers, which shall contain the following items:

1. The name and location of the project;
2. The name and address of the developer;
3. The name and address of the prospective purchaser;
4. A description of the particular lot, parcel, unit or interest reserved;
5. The purchase price and terms;
6. A notice in 10-point bold face type that the nonbinding reservation agreement does not obligate the purchaser in any way, that there is or is not, as the case may be, a guarantee by the developer that the purchase price and terms will not be changed for such period of time as may be specified in the agreement, that there is or is not, as the case may be, a guarantee that the unit, lot, parcel or interest described in the agreement will be built or otherwise made available for purchase by the prospective purchaser, and that he or she may receive a refund of the deposit, upon request, at any time prior to the execution of a contract or agreement of sale;
7. All nonbinding reservation agreements shall be signed by the party reserving the unit and by the developer or the agent of the developer.
8. A statement of the period of time for which the nonbinding reservation agreement is effective.

History

HISTORY:

As amended, R.1981 d.365, eff. October 8, 1981.

See: 13 New Jersey Register 474(a), 13 New Jersey Register 704(b).

(a)6: "that there is" ... "by the prospective purchaser" added.

Amended by R.1996, d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

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[N.J.A.C. 5:26-10.6](#)

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§ 5:26-10.6 Period of effect

Unless cancelled by the prospective purchaser, the nonbinding reservation agreement shall be effective for a period of time no less than 15 days or, in the case of a conversion, 90 days after notice to the prospective purchaser that the application for registration and public offering statement have been registered by the Agency as provided in this chapter or until the developer withdraws the proposed planned real estate development or retirement community.

History

HISTORY:

As amended, R.1981 d.130, eff. May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

"or, in the case of a conversion, 90 days" added.

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[N.J.A.C. 5:26-10.7](#)

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§ 5:26-10.7 Notice

The developer shall give written notice to the prospective purchaser that the application for registration and public offering statement have been registered by the Agency, enclosing a copy of the public offering statement, and notify the prospective purchaser that he or she must enter into a contract or agreement of sale within a specific period of time, no less than 15 days, or the nonbinding reservation will expire and his or her money will be refunded.

History

HISTORY:

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

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[N.J.A.C. 5:26-10.8](#)

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§ 5:26-10.8 Nonbinding reservations

The registration of an application to accept nonbinding reservations shall be valid for a period of four months from registration unless an application for registration pursuant to N.J.A.C. 5:26-3 is submitted during that time, in which event the registration of the application to accept nonbinding reservation shall automatically be extended during the registration period.

History

HISTORY:

R.1981 d.130, eff. May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

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[N.J.A.C. 5:26-11.1](#)

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§ 5:26-11.1 Administration

The Division of Codes and Standards in the Department of Community Affairs shall administer and enforce these rules. Within the Division, responsibility for administration and enforcement of these rules shall be vested in the Bureau of Homeowner Protection. All powers and responsibilities vested in the Director, Division of Codes and Standards, shall be executed by the Chief, Bureau of Homeowner Protection, subject to supervision by the Director and by the Assistant Director for Construction Code Enforcement, with the exception of the power to make rules and the power to make final determinations resulting from any hearing required or permitted pursuant to law.

History

HISTORY:

As amended, R.1983 d.446, eff. October 17, 1983.

See: 15 New Jersey Register 1055(a), 15 New Jersey Register 1758(b).

Changed names of Division and Bureau.

Amended by R.1990 d.452, effective September 4, 1990.

See: 22 New Jersey Register 1702(a), 22 New Jersey Register 2682(b).

Administration clarified.

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

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The Planned Real Estate Development Full Disclosure Act granted authority to order rescission of condominium contracts which violated [Act. Coastal Group v. Planned Real Estate Development Section, Dept. of Community Affairs, 267 N.J.Super. 49, 630 A.2d 814 \(A.D.1993\)](#).

Department of community affairs had power to order real estate developer to rescind purchase contracts and return purchasers' deposits. [N.J.S.A. 45:22A-22](#), 45:22A-33, 45:22A-38. Coastal Group v. Plan Real Estate Development Section, Dept. of Community Affairs, 92 N.J.A.R.2d (CAF) 15.

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§ 5:26-11.2 Complaints and investigations

Any person may, at any time, file a complaint with the Agency concerning any matter subject to the Act or these rules. Said complaint may be written or oral. Nothing in this section shall prevent the Agency from instituting an investigation on its own initiative.

History

HISTORY:

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

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§ 5:26-11.3 Rights to a hearing

Any developer or applicant for registration aggrieved by a notice or order of the Agency issued under the Act or these rules shall be entitled to a hearing before the Office of Administrative Law in accordance with the Administrative Procedure Act, [N.J.S.A. 52:14B-1](#) et seq. and the Uniform Administrative Procedure Rules, [N.J.A.C. 1:1](#), provided that a written request for such hearing is filed within 10 business days of receipt of the notice or order complained of.

History

HISTORY:

As amended, R.1984 d.434, eff. October 1, 1984.

See: 16 New Jersey Register 2032(a), 16 New Jersey Register 2522(a).

Substantially amended.

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

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§ 5:26-11.4 Application for hearing

All hearing requests shall be filed with the Hearing Coordinator, Department of Community Affairs, PO Box 802, Trenton, New Jersey 08625-0802.

History

HISTORY:

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

Amended by R.2001 d.48, effective February 5, 2001.

See: [32 New Jersey Register 1272\(a\)](#), [33 New Jersey Register 550\(c\)](#).

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§ 5:26-11.5 Penalties

(a) The Commissioner, through the Agency, may levy and collect the penalties set forth in the Act after affording the person allegedly in violation an opportunity for a hearing, in accordance with the Administrative Procedure Act, [N.J.S.A. 52:14B-1](#) et seq., on the alleged violations, and after a final determination that said person is guilty of the violation.

(b) When a penalty so levied has not been satisfied within 30 days, the penalty may be sued for and recovered by and in the name of the Commissioner in a summary manner pursuant to the Penalty Enforcement Law ([N.J.S.A. 2A:58-1](#) et seq.).

(c) The Agency may, in the interest of justice, compromise any civil penalty if in its determination the gravity of the offense or offenses does not warrant the assessment of the full fine.

History

HISTORY:

Amended by R.1990 d.452, effective September 4, 1990.

See: 22 New Jersey Register 1702(a), 22 New Jersey Register 2682(b).

References to the APA and the UAPR added at (a).

Amended by R.1996 d.94, effective February 20, 1996.

See: [27 New Jersey Register 4478\(a\)](#), [28 New Jersey Register 1226\(a\)](#).

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Condominium owner's willful failure to disclose building's deterioration and judgment against it justifies penalties. *Barclay Towers Associates, L.P. v. Community Affairs Department*, 96 N.J.A.R.2d (CAF) 29.

Developer was guilty of two separate violations of the Planned Real Estate Development Full Disclosure Act; separate penalties. [N.J.S.A. 45:22A-21](#) et seq., [45:22A-37](#), 45:22A-38. *Department of Community Affairs, Div. of Housing & Development v. Atrium Palace Syndicate*, 92 N.J.A.R.2d (CAF) 9.

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§ 5:26-11.6 Consent orders

The Agency may, in its discretion, enter into any consent order, stipulation or settlement in any matter.

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§ 5:26-11.7 Applicability

(a) These rules shall be applicable as follows:

1. To any portion of a planned real estate development which did not have on November 22, 1978:
 - i. Its building permit or permits; or
 - ii. Final municipal approval of its site plan or subdivision plat.
2. To any portion of a planned real estate development, regardless of the issuance of building permits or final municipal approval of its site plan or subdivision plat, that is assessed or taxed as an agricultural or horticultural use pursuant to the "Farmland Assessment Act of 1964", P.L. 1964, c.48 ([N.J.S.A. 54:4-23.1](#) et seq.);
3. To any portion of a retirement community, regardless of the issuance of building permits or approval of site plans or subdivision plats and regardless of whether it has been issued a notice of filing pursuant to the Retirement Community Full Disclosure Act, P.L. 1969, c.215 ([N.J.S.A. 45:22A-1](#) et seq.) or has been registered pursuant thereto.
4. To any portion of a conversion, regardless of the issuance of building permits or approval of site plans or subdivision plats, that offers its first unit for sale after the effective date of the Act;
5. To any conversion in which a unit has been offered on or before the effective date of the Act that has 25 or more units remaining unsold;
6. To any developer, its successors and assigns specifically including, but not limited to, purchasers of the developer or the planned real estate development or retirement community and any person, institution or agency that may acquire title.

History

HISTORY:

As amended, R.1979 d.439, eff. November 1, 1979.

See: 11 New Jersey Register 497(a), 11 New Jersey Register 610(b).

Amended by R.1989 d.317, effective June 19, 1989.

See: 21 New Jersey Register 958(a), 21 New Jersey Register 1669(a).

Provisions added to include units registered under [N.J.S.A. 45:22A-1](#) et seq. (P.L.1969, c.215).

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[N.J.A.C. 5:26-11.8](#)

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§ 5:26-11.8 Construction

These regulations shall be construed liberally to effectuate the purposes of the Act and of these regulations.

History

HISTORY:

As amended, R.1979 d.439, eff. November 1, 1979.

See: 11 New Jersey Register 497(a), 11 New Jersey Register 610(b).

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[N.J.A.C. 5:26-11.9](#)

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§ 5:26-11.9 Waiver

The Agency may grant exemptions to this chapter or any part thereof when, in its opinion, the enforcement thereof is unduly burdensome or impractical.

History

HISTORY:

As amended, R.1981 d.130, eff. May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

Old text concerning "temporary exemption" deleted, and [N.J.A.C. 5:26-11.10](#) concerning "waiver" recodified as [N.J.A.C. 5:26-11.9](#).

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[N.J.A.C. 5:26-11.10](#)

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§ 5:26-11.10 Severability

If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect and to this end the provisions of this chapter are severable.

History

HISTORY:

As amended, R.1981 d.130, eff. May 7, 1981.

See: 12 New Jersey Register 631(b), 13 New Jersey Register 259(a).

[N.J.A.C. 5:26-11.11](#) concerning "severability" recodified as [N.J.A.C. 5:26-11.10](#).

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[N.J.A.C. 5:26-11.11](#)

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§ 5:26-11.11 (Reserved)

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[N.J.A.C. 5:26, Appx.](#)

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APPENDIX

PLANNED REAL ESTATE DEVELOPMENT FULL

DISCLOSURE REGULATIONS

ENGINEERING SURVEY OUTLINE:

(NOTE: The engineering survey shall be in narrative form and include, but not be limited to description and condition of all applicable items in the outline below, in the order listed. The outline is intended as an aid to the inspecting architect or engineer and not as a questionnaire.)

Address

Block Number, Lot Number

Zoning

Year Built

Copy of last inspection report under the Hotel and Multiple Dwelling Law ([N.J.S.A. 55:13A-1](#) et seq.)

Violations outstanding--building, housing, air pollution, fire, other authorities

Alterations--date, number and brief description

Class of Construction (fireproof, non-fireproof, etc.)

Site:

Location

Size--dimensions, acreage

Streets--project owned or public

Paving--material

Curbing--material

Sidewalks--material

Drainage

Catch basins--type sewers

Street lighting

Drives--paving, curbing, drainage

Off street parking areas--paving, curbing, drainage

Utilities: give company or municipality furnishing service

Water supply

Sanitary sewers

Gas

Electric

Telephone

Sub-soil conditions including water conditions

Number of buildings and use

Structural System:

Steel or concrete frame

Other--describe

Type of foundations

Exterior of Building:

Walls (describe wall materials on all sides at all levels)

Insulation--"R" number

Window (types and materials) in all parts of building

Sills

Grilles

Stormsash

Screens

Hardware

Single or double glazing

Caulking

Parapets and copings--materials

Chimneys and caps: number and materials for each

Boilers

Incinerators

Fireplaces

Other

Balconies and Terraces:

Deck finish

Balustrade (type and material)

Copings

Railings

Soffit

Doors to balcony--type and material

Tenant entrances:

Marquees

Canopy

Exterior doors

Vestibule doors

Exterior stairs

Railings

Other

Service entrances:

Doors

Gates

Exterior stairs

Railings

Other

Roofs and Roof Structures:

Type roofs (for all areas)

Material (give number of plies if built up)

Insulation--"R" number

Surface finish

Age

Bond or guarantee (if any)

If old roof is re-covered, give date and description

Flashing materials

Drains

Gutters and leaders

Skylights

Bulkheads--wall materials

Stair

Elevator

Other

Water tank enclosure (if any)

Metal work at roof levels:

Exterior metal stairs

Ladders

Railings

Other

Fire Escapes:

Number

Type

Material

Yards and Courts:

Paving

Drainage

Railings

Stairs

Fencing or walls

Other

Interior Stairs:

Number of stairs of each type

Enclosure--construction and interior finishes

Stair construction

Treads and risers--materials

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Railings

Elevators:

Number of passenger and service elevators

Manufacturer

Age

Type of operation and speed (ft. per minute):

Manual

Automatic (type controls)

Doors (sliding, swinging, manual, automatic)

Date and description of improvements

Location of machine rooms

Type of machine and input power

DC to motor

AC to motor

Description of cabs

Floor

Walls

Ceiling

Date of last inspection (e.g. government, maintenance contract, etc.)

Laundry Rooms:

Location and number of rooms

Washers--number

Dryers--number

Laundry trays--number

Room ventilation

Dryer ventilation

Operation (co-op owned, common element or concession)

Refuse Disposal:

Method of disposal

Number of incinerators or compaction units

Approval by authority having jurisdiction

Storage location

Pick-up schedule

Public or contract collection

Plumbing and Drainage:

Water supply

Source or company--approvals as required

Meters--individual or common charges

Piping--materials, age, condition, insulation

(Date and description of replacement or major improvements)

Describe system, pumps, storage

Fire protection system--standpipes, hoses, sprinklers, siamese connections

Water storage tanks

Number

Material

Location

Capacity--fire reserve

Water pressure

Sanitary sewage system

Piping--age and materials

Sewage pumps (if any)

Sewage disposal--public, private, treatment, drainfield, sewer

Storm Drainage System

Piping--age and materials

Pumps (if any)

Method of disposal

Heating:

Method

Number of boilers

Fuel

Manufacturer of boilers, age and date of installation

Manufacturer of burners, age and date of installation

Date of boiler inspection

Capacity of oil tank

Location of oil tank

Date and description of major changes or improvements to system

Type of controls

Description of radiators, piping, insulation, valves, pumps, etc.

Method of heating and distributing domestic hot water

Ventilation:

System--describe

(Include windowless areas, halls, garages, laundries, kitchens, baths)

Air Conditioning:

Type system--central system or individual units

Window unit ownership--tenant, common element or co-op

Water tower, air-cooled condensers--location

Gas Supply:

Type--bottled or main service

Meters--individual or common

Piping--material, condition

Pest Control:

Need and frequency of service

Electrical:

Date of installation

Improvements--date and complete description

Meters--common or individual

Service entrance equipment including:

Voltage and current ratings

Phases

Ratings of main fuses, distribution breakers or fuses to apartments

Adequacy of:

Service (average number circuits per apartment and capacities)

Lighting and fixtures

Convenience outlets; appliance outlets (average number per room including air-conditioner outlets)

Intercommunication system and door signal system

Switchboard

Television reception facilities:

Master antenna--apartment outlet distribution

Cable t.v.

Antenna by tenants

Security t.v.

Number cameras, monitors

Description and adequacy of lighting:

Entrance

Halls and stairs

Yard

Site

Garages and Parking Areas:

Location

Number of parking spaces and how allocated

Type of parking (attended?)

Ventilation--method

Fire protection

Drains

Recreation Facilities:

Swimming pool--approval by authorities

Replacement Cost:

A good faith estimate of the replacement cost of major structural components, such as but not limited to heating and air conditioning systems, plumbing system and roof.

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