

5. Preparation and review of contracts and purchase orders concerning the housing project;

6. Advising the sponsor and managing agent with regard to tenant and lease matters, but not including summary dispossession actions; and

7. Such other services as the sponsor may direct to be performed in connection with and respecting the operations of the project.

(b) Sponsors may engage the services of an attorney to perform tenancy related court actions including the enforcement of leases, collection of rent and dispossession of tenants. For cooperative or condominium projects, sponsors may engage the services of an attorney to perform court actions related to the collection of association dues or carrying charges and the enforcement of subscription agreements, stock certificates or other forms of agreements related to the cooperative or condominium project.

(c) Sponsors may engage the services of an attorney to perform services outside the scope of services in (a) and (b) above, as the need arises for the project. Such services include, but are not limited to, litigation, mortgage loan close-outs, conversion closings and issues requiring special expertise.

### 5:80-31.3 Maximum fees

(a) The maximum fees that can be paid from project funds for Agency approved attorney services are as follows:

1. General legal matters . . . up to \$175.00/hour;
2. Tenancy actions, as follows:
  - i. For each of the first two cases (requiring court appearance) on the same day . . . up to \$140.00;
  - ii. For each additional case presented on the same day . . . up to \$104.00; and
  - iii. For each case prepared for trial but resolved prior to actual court appearance . . . up to \$70.00; and
3. General litigation, as follows:
  - i. Non-trial hours . . . up to \$244.00/hour; and
  - ii. Trial hours . . . up to \$280.00/hour.

(b) For conversion closing, mortgage close-outs, special expertise and all other matters not covered by (a) above, housing sponsors shall submit a fee structure to the Agency for approval.

(c) Paralegal and secretarial services in connection with (a) and (b) above shall be included within the fees outlined above. No additional fees will be paid for paralegal or secretarial services.

(d) Additional compensation may be paid for reasonable out-of-pocket expenses, approved by the Agency, including

copying, travel, postage, filing fees, transcripts, and expert witnesses, etc.

(e) The above fees may not exceed fees charged to other clients for comparable work.

(f) The maximum fees in (a) above will be adjusted annually based on the overall Consumer Price Index for New York-Northeastern New Jersey as published by the United States Department of Labor, Bureau of Labor Statistics as of September 30 of the year preceding the year for which the adjustment is to be implemented. The increases will be effected through a notice of administrative changes published in the New Jersey Register. The Agency will notify housing sponsors of the new rates.

Amended by R.2004 d.449, effective December 6, 2004.

See: 36 N.J.R. 3654(a), 36 N.J.R. 5336(a).

Rewrote (a); added (f).

Administrative change.

See: 37 N.J.R. 4910(c).

Administrative change.

See: 38 N.J.R. 5356(a).

Administrative change.

See: 39 N.J.R. 5077(a).

Administrative change.

See: 41 N.J.R. 127(c).

### 5:80-31.4 Agency approval

(a) Housing sponsors desiring to engage the services of an attorney pursuant to the rules within this subchapter shall obtain the written approval of the Agency. Sponsors shall submit a proposal outlining the scope of services to be performed by the attorney.

(b) The Agency shall approve the engagement of attorney services provided the services and fees to be charged fall within those permitted by N.J.A.C. 5:80-31.2(a) or (b) and 31.3, respectively. For services outlined in N.J.A.C. 5:80-31.2(c), the Agency shall approve the engagement of an attorney provided the services are necessary or beneficial to the project, as determined by the Agency, and there are sufficient project funds to pay for such services. The Agency does not guarantee the availability of funds.

(c) All sponsors shall enter into a written attorney engagement agreement using forms approved by the Agency.

## SUBCHAPTER 32. HOUSING INVESTMENT SALES

### 5:80-32.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

“Available cash” means all the cash available to an eligible LD sponsor upon the closing of a housing investment sale (after payment of all transaction costs) including, but not limited to:

1. The cash portion of the purchase price paid by the buyer;

2. Any obligations or instruments of indebtedness of the buyer in favor of the seller constituting a portion of the purchase price as provided in these rules; and

3. Any accumulated residual receipts, that are not subject to recapture by the United States Department of Housing and Urban Development.

"Eligible LD sponsor" means a for-profit corporation or partnership organized under, and remaining subject to, the Limited Dividend Law, L. 1949, c.184, § 1 et seq., as amended (N.J.S.A. 55:16-1 et seq.), that owns and operates an Agency-financed, multifamily, rental housing project that, in each of the three fiscal years preceding the housing investment sale, has:

1. Produced a positive cash flow from operations; and
2. Been current in all debt service and escrow payments required by the Agency.

"Housing investment sale" means a transaction that promotes the provision or maintenance of low and moderate income housing, as defined pursuant to the Fair Housing Act, through the sale by an eligible LD sponsor of an Agency-financed, multifamily, rental housing project to a qualified housing sponsor upon the following terms:

1. The buyer executes a deed restriction (and such other instruments reasonably required by the Agency) at the closing of the housing investment sale to ensure that the project will remain affordable to low and/or moderate income tenants as provided in the original mortgages; and subject to Agency restrictions regarding tenant income eligibility, tenant selection, project reserves, return on equity, rent increases and the provisions at N.J.S.A. 55:14K-7b for 35 years after the expiration of the term of the project mortgage. The foregoing documents shall also provide for the payment of a servicing fee to the Agency through the end of the additional 35 years for monitoring the restrictions that apply to the project. Such fee shall not be less than the servicing fee being paid by the eligible LD sponsor seller at the time of the housing investment sale; and

2. The eligible LD sponsor invests an amount equal to 50 percent of the maximum additional return in the Housing Investment Sale.

"Housing Investment Sales Account" means an account established under the Agency's administrative fund. Moneys on deposit in the account may be used, at the Agency's sole discretion, to provide loans or grants that will promote the provision or maintenance of low and moderate income housing as defined pursuant to the Fair Housing Act.

"Maximum additional return" means the additional return payable to the owners of an eligible LD sponsor under the Limited Dividend Law but not under the Housing and Mort-

gage Finance Agency (HMFA) Law, N.J.S.A. 55:14K-1 et seq., consisting of:

1. Cash invested by the owners in the eligible LD sponsor that has not previously been recognized by the Agency as investment in a housing project (including, but not limited to, those amounts invested by the owners at the initial Agency mortgage closing; any DCE/CDE funds; and the reserve for repair and replacement account, the operating reserve account and the tax and insurance escrow accounts (being transferred to the buyer in conjunction with the housing investment sale);

2. A cumulative annual return of eight percent on the investment described in 1 above;

3. If project revenues representing the return described in 2 above have been invested in the project's residual receipts account or otherwise, any income earned on said annual return;

4. An amount equal to the total reduction or amortization of the original principal owing on the eligible LD sponsor's mortgage loan from the Agency; and

5. An amount equal to the increase in the market value of the eligible LD sponsor's realty and tangible personalty during the period such assets were owned by the eligible LD sponsor, such increase to be determined by subtracting the following from the purchase price for those assets:

- i. The eligible LD sponsor's investment in the project as determined by the Agency under the HMFA Law; and
- ii. The original principal amount of the eligible LD sponsor's mortgage indebtedness to the Agency.

"Purchase price" means, in a housing investment sale, a sum equal to the fair market value of the realty and tangible personalty transferred to the buyer in the sale said sum to be comprised of:

1. Assumption of the eligible LD sponsor's first mortgage loan from the Agency and any other indebtedness of the eligible LD sponsor secured by project assets;

2. Cash paid by the buyer at the closing of the housing investment sale; and

3. Such obligations or instruments of indebtedness of the buyer in favor of the seller as the Agency may approve pursuant to N.J.A.C. 5:80-32.3(c).

"Residual receipts" means the balance of funds (including Development Cost Escrow and Community Development Escrow funds) remaining after the deduction of the following items from the cash and the investment accounts of an eligible LD sponsor:

1. Debt service arrearages;
2. Current unpaid invoices;