

“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.

“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.

“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.

“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.

“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, and shall specifically include “time-share estates” as defined herein.

“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 (N.J.S.A. 40:55D-6).

“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.

“State” means the State of New Jersey.

“Time-Share Estates” means:

1. An “interval estate” meaning a combination of an estate for years in a lot, parcel or unit, during the term of which title rotates among the time-share owners coupled with a vested undivided fee simple interest in the remainder in that unit as established by the declaration or deed creating the interval estate; or
2. A “time-span estate” meaning a combination of an undivided interest in a present estate in fee simple in a lot, parcel or unit established by the declaration or deed creating the time-span estate, coupled with the exclusive right to possession and occupancy of the lot, parcel or unit during a regularly recurring period; or
3. A “vacation license” meaning the exclusive right to possession and occupancy of a lot, unit or parcel during a regularly recurring period.

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).

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.

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

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

"and Urban Renewal" deleted 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).

Section substantially amended.

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

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

Bureau of Construction Code Enforcement changed to Consumer Protection.

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.2001 d.48, effective February 5, 2001.

See: 32 N.J.R. 1272(a), 33 N.J.R. 550(c).

SUBCHAPTER 2. REGISTRATION

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.

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 respect to condominiums, cooperatives, time-sharing 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.

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).

5:26-2.3 Request for exemptions

(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 a planned real estate development or retirement community that he 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 \$112.00.

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.

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.

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 as provided therein, together with the filing fee in the amount of \$1,080 plus \$108.00 per lot, parcel, unit or interest, made payable to the Treasurer, State of New Jersey. In the event lots, parcels, units or interests are added during registration, an additional fee of \$108.00 per lot, parcel, unit or interest shall be paid. There shall be no refunds for deletions.

1. 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.

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.

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.

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.

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.

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.

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.

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.

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.