

4. In the case of proposed changes or transfers of ownership of assisted living residences (ALRs), if any provision(s) of this chapter are in conflict with any provision(s) of N.J.A.C. 8:36 the provision(s) of N.J.A.C. 8:36 shall govern.

(b) Changes or transfers which fall within (a)2 and 3 above shall be governed by the general policy as set forth in N.J.A.C. 5:80-5.2 as well as the required documents submission set forth in N.J.A.C. 5:80-5.6(a) for a modified review. In addition, the fee set forth at N.J.A.C. 5:80-5.9(a)3 shall apply except that in no event shall the fee be less than \$1,000.

(c) The rules within this subchapter shall also be applicable to changes or transfers in ownership in cooperative or condominium projects financed by the Agency.

Amended by R.1985 d.241, effective May 20, 1985.

See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Old text deleted and new text substituted.

Amended by R.1990 d.504, effective October 15, 1990.

See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

Examples deleted from (a); exception at (a)3 clarified; lower limit of fee in (b) set at \$1,000; (c) added.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

In (a), added 4.

5:80-5.4 Procedure

(a) The seller must initially submit to the executive director of the Agency a written request for approval of any proposed change in ownership. The request must contain a detailed description of the terms of sale or other ownership changes and a statement of the reasons for the proposed sale. The seller must also identify in detail and in a written report, the present physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information or revisions to the report and may conduct its own review of the housing project's condition and operation.

(b) All essential parties within the seller's organization documents must approve the transfer or sale. An affidavit and opinion of the seller's legal counsel must be submitted to the Agency as proof of the legality of the transfer pursuant to the seller's Partnership Agreement or any other document and all applicable laws and regulations. An opinion of the buyer's legal counsel may also be requested by the Agency.

(c) In selecting the prospective buyer, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best financial package/offer. Full and complete disclosure as to the nature and amount of the transaction must be made in writing to the Agency.

(d) As a condition of approving the transfer, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller and the independent review by the Agency. Deferred maintenance must be corrected at the time of transfer unless otherwise approved by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency. A schedule for performing the work and a letter of credit or bond in the amount needed to complete the work must be provided to the Agency at closing.

(e) Cash contributions must be sufficient to fund both immediate and anticipated reserve needs. The mortgage and all fees and charges due the Agency must be current at the time of closing. All housing project reserve accounts must be funded to an acceptable level, as determined by the Agency, within 12 months from the date of transfer in accordance with the Agency's repair and replacement funding schedule.

(f) Contributions toward the purchase price from any sources other than cash proceeds, must be identified.

(g) Upon assignment and assumption of the Agency's mortgage, modifications shall be made to the mortgage clearly specifying the Agency's right to enforce these regulations.

5:80-5.5 Scope of review

(a) The scope of the Agency's review of transfer depends on the nature of the interest to be transferred. A transfer of 90 percent or more of the ownership interest requires full review. Full review is also required in the following instances.

1. Transfer of title from the seller to any other party;
2. Any conveyance or attempted conveyance by land contract;
3. Transfer of 90 percent or more of the interest in the partnership/owner within a five year period;

4. A change in general partners or management control of the owner.

(b) In other cases, the Agency in its discretion may conduct a modified review.

5:80-5.6 Required documents

(a) Required documents for a modified review must be satisfactory to the Agency and include at least the following:

1. Administrative questionnaires for buyer;
2. Complete description as to the nature of the transition;
3. Copy of Partnership Certificate with proposed revisions;
4. Any other documents determined by the Agency to be necessary.

(b) The following additional documents may be required for full review.

1. Previous Participation Certificates (form 2530) for buyer;
2. Experience questionnaire for buyer;
3. Buyer's certified financial statements;
4. Legal opinion from seller's attorney and, if requested by the Agency, for buyer's attorney;
5. Appraisal of property;
6. Physical inspection report approved by the Agency;
7. Financial report on project operations approved by the Agency.

Amended by R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Section substantially amended.

5:80-5.7 Secondary financing

(a) Secondary financing, representing a portion of the purchase price may be permitted by the Agency. However, the following limitations exist where secondary financing is an element of the transaction:

1. The Agency will review and may restrict all secondary financing particularly where the secondary financing is secured by a lien on the project;
2. Repayment of secondary financing cannot be taken into consideration in determining the rents to be charged tenants;
3. The second mortgage, security agreement, or any other debt instrument must be subordinate to any existing mortgage of the agency;
4. In the event of a declaration of default on any existing mortgage held by the Agency, the secondary financing debt and all rights thereunder to rent or any

other project income or assets shall be assigned to the Agency.

5:80-5.8 Return on equity

(a) The buyer shall assume the same rate of return on equity that the seller had. The buyer's equity in the housing project shall be determined in accordance with N.J.A.C. 5:80-3.3(a).

(b) The seller shall be limited to a cumulative, but not compounded, return on its equity, from project operations or sale, at the rate of return as determined by N.J.A.C. 5:80-3 and set forth in the mortgage and other contractual documents between the seller and agency.

1. Upon sale or other disposition of the project or any interest therein, the seller shall be entitled to a return of its equity in the project and any accrued but undistributed return on its equity. Such return shall be conditioned upon the Agency's mortgage and any other supplemental project financing from the Agency or other governmental agency or department being assumed by the buyer, and further conditioned upon the making of any required project repairs or improvements, pursuant to N.J.A.C. 5:80-5.4(d), and the payment of all amounts due the Agency and the funding of reserves pursuant to N.J.A.C. 5:80-5.4(e). The seller shall not be entitled to or paid any return until such conditions have been met. The seller's equity in the project shall be determined in accordance with N.J.A.C. 5:80-3.3(a).

2. Upon sale or other disposition of the project or any interest therein, the seller is not entitled to and may not retain or be paid any more than its equity in the project plus any accrued but undistributed return on its equity. Any amounts realized in excess of the aforementioned amounts less the total of the amounts listed below shall be paid into the Multi-family Rental Investment Program:

- i. Any amount of the purchase price which is paid or escrowed in an Agency controlled account for repairs or improvements pursuant to N.J.A.C. 5:80-5.4(d);
- ii. Any amounts paid to fund reserves pursuant to N.J.A.C. 5:80-5.4(e); and
- iii. Any mortgages or other supplemental financing from the Agency or other governmental agency or department which are paid or assumed upon transfer.

3. Funds paid into the Multi-family Rental Investment Program shall be used as provided therein or in the case of a housing sponsor organized under N.J.S.A. 55:16-1 et seq., such excess shall be distributed pursuant to said Act. The funds deposited into this program shall be used for the purpose of providing loans to rental projects meeting low and moderate income needs.

4. In cases where the sale or other disposition of the project includes a permitted prepayment of the Agency

mortgage, return on equity shall be governed by the provisions of N.J.A.C. 5:80-5.10(b).

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

References to rate of return on equity amended to conform to applicable statutes, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Financing Agency*, 114 N.J. 226 (1989).
Amended by R.1995 d.247, effective May 15, 1995.
See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

5:80-5.9 Required payment and repayments

(a) At closing, the following payments and repayments are required:

1. The buyer shall pay to the Portfolio Reserve Account a sum amounting to 3.25 percent of the purchase price.
2. The buyer shall submit with its request for review, a non-refundable fee of \$5,000 which will be applied at closing toward any payment or repayments due.
3. The seller shall pay to the Agency, as a processing fee, an amount as determined by the Agency, to reimburse the Agency for its administrative cost in processing the seller's request to transfer ownership of the project or any interest therein.
4. Any outstanding supplemental financing must be paid at closing, unless the Agency determines the financial viability of the project is not jeopardized by the continuation of such supplemental financing and the buyer assumes all supplemental financing.

(b) The Portfolio Reserve Account is a fund established by the Agency to provide support for any project financed by the Agency which is in need of financial assistance. The Portfolio Reserve Account, and any interest or investment income earned thereon, may be used, at the Agency's discretion, to fund debt service arrears and other operating deficits, capital improvements, and repairs of any project which cannot fund these items from normal project income. The Portfolio Reserve Account will enable the Agency to assist projects in maintaining physical and fiscal viability so as to preserve the housing units at rents which are affordable to low- and moderate-income families. Eligibility for assistance from the Portfolio Reserve Account shall be subject to the terms and conditions as determined by the Agency.

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

References to fees amended to conform to applicable statutes, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Financing Agency*, 114 N.J. 226 (1989); contribution to Portfolio Reserve Account required in (b).

Case Notes

Regulation limiting profits on project financed by state Housing and Mortgage Finance Agency was invalid. *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency*, 114 N.J. 226, 553 A.2d 798 (1989).

Regulation imposing fees on sellers was invalid. *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency*, 114 N.J. 226, 553 A.2d 798 (1989).

Prepayment regulations do not violate the terms of the N.J. Housing and Mortgage Finance Agency, are statutorily authorized, and do not violate plaintiff's constitutional rights; regulation imposing closing fees is unreasonable and thus invalid. *Lower Main Street Assoc. v. N.J. Housing and Mortgage Finance Agency*, 219 N.J. Super. 263, 530 A.2d 324 (App.Div.1987) affirmed in part, reversed in part 114 N.J. 226, 553 A.2d 798.

5:80-5.10 Prepayment

(a) Prepayment of the mortgage loan made by the Agency is prohibited, except as permitted in (b) below.

(b) Prepayment of the Agency mortgage loan will be permitted, with the prior written approval of the Agency, provided all of the following conditions are met:

1. Sponsors of projects may prepay the mortgage at any time following the 20-year period following the date of the mortgage closing. However, any such prepayment shall be conditioned upon the Housing Sponsor's agreement that: The Agency policies on tax, insurance and repair and replacement reserves; The provisions of N.J.S.A. 55:14K-7b; and The statutory provisions at N.J.S.A. 55:14K-1 et seq. and the corresponding rules under this chapter regarding tenant income eligibility, tenant selection, rent increases, certification/recertification of income, affirmative fair housing marketing, and transfer of ownership interests shall continue to be applicable in their entirety to the sponsor, project and tenants residing therein until the original expiration date of the original mortgage loan. Such prepayment shall also be conditioned upon the agreement of the Sponsor to pay the servicing fees and charges currently being paid by the Sponsor under the mortgage documents, through the remainder of the original mortgage term, in order to cover the administrative costs of the Agency in monitoring the statutory and regulatory controls that will continue to apply to the project. The Agency may require Housing Sponsors to execute a deed restriction or other appropriate agreement upon prepayment whereby the Sponsor acknowledges the continuing statutory and regulatory control of the Agency and its obligation to pay fees and charges determined by the Agency.
2. Any repairs or improvements pursuant to N.J.A.C. 5:80-5.4(d) must be made prior to prepayment or an amount sufficient to fund such repairs or improvements must be paid into an Agency controlled escrow account upon prepayment.
3. All fees and charges due the Agency must be paid prior to prepayment.

4. All supplemental financing on the project by the Agency or other State agency must be prepaid.

5. After prepayment, in implementing the provisions of N.J.S.A. 55:14K-7b, the Agency will initially require the following:

- i. Submission of an annual budget;
- ii. Submission of annual audited financial statements;
- iii. Annual physical inspections conducted by the Agency.

6. The Agency reserves the right to implement any of the additional provisions of N.J.S.A. 55:14K-7b, if determined by the Agency to be needed to preserve the financial viability of the project or its status as a low and moderate-income project, to maintain the physical condition of the project or to help ensure the safety and well-being of the tenants residing at the project.

7. After prepayment, return on equity rules at N.J.A.C. 5:80-3 shall continue until the expiration of the original mortgage term or until the owner funds an operating reserve account, whichever is sooner. Upon funding of an operating reserve account, return on equity rules shall terminate. The operating reserve shall be equal to three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments. The three/six months of operating expenses shall be calculated based on the Agency-approved annual budget. Once established, interest earned on a fully-funded operating reserve account may be withdrawn by the owner upon written request to and verification by the Agency that the account is fully-funded. If the operating reserve is thereafter used, return on equity rules shall be reinstated until the operating reserve is again fully-funded. The determination of a fully-funded operating account after its initial establishment shall be based on the Agency-approved budget in effect at the time the project first established the operating reserve account.

(c) Notwithstanding (b) above, prepayment shall not be approved or permitted in cases which would:

1. Cause the Agency to be in default under its obligations to the bondholders of the bonds issued to finance the project;
2. Jeopardize the continuing tax exempt status of the bonds; or
3. Reduce or terminate subsidies to the project such as the United States Department of Housing and Urban Development Section 8 or Section 236.

(d) Upon prepayment of the Agency mortgage as provided in (b) above, the Agency will endorse the mortgage for cancellation so the Sponsor may cancel it of record. In addition, upon prepayment, the statutory and regulatory

controls of the Agency at N.J.S.A. 55:14K-1 et seq. and this chapter shall terminate for the Housing Sponsor and project, except for those preserved by (b)1 above. The termination of the Agency's statutory and regulatory controls shall not affect the requirements, restrictions and obligations of Housing Sponsors as mandated by N.J.S.A. 55:16-1 et seq. or any other applicable statute under which the corporate entity of the Housing Sponsor was created.

(e) The provisions of this section regarding prepayment shall not apply to projects financed under the Agency's New Jersey Urban Multi-Family Production Program (JUMPP).

(f) The provisions of this section which impose conditions on prepayment regarding Agency policies on the insurance and repair and replacement reserves, the provisions of N.J.S.A. 55:14K-7b, and the regulations on transfer of ownership interests and return on equity shall not be applicable to projects financed between October 15, 1990 and January 17, 1995.

Amended by R.1990 d.504, effective October 15, 1990.

See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

Exceptions to prepayment prohibition added, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency*, 114 N.J. 226 (1989).

Amended by R.1995 d.20, effective January 17, 1995.

See: 26 N.J.R. 1187(a), 27 N.J.R. 321(b).

Amended by R.1995 d.247, effective May 15, 1995.

See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

Case Notes

Regulation preventing prepayment of mortgage loans without agency approval was invalid. *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency*, 114 N.J. 226, 553 A.2d 798 (1989).

Prepayment regulations do not violate the terms of the N.J. Housing and Mortgage Finance Agency, are statutorily authorized, and do not violate plaintiff's constitutional rights; regulation imposing closing fees is unreasonable and thus invalid. *Lower Main Street Assoc. v. N.J. Housing and Mortgage Finance Agency*, 219 N.J. Super. 263 (App.Div. 1987), affirmed in part, reversed in part 114 N.J. 226, 553 A.2d 798.

5:80-5.11 Approval and disclosure requirements

(a) The Agency specifically reserves the right to investigate and disapprove any prospective buyer or any other party involved in the transaction including without limitation all limited and general partners, attorneys, syndicators, brokers or consultants, as well as any partners or shareholders thereof. Prior to its approval, the Agency may require any party to disclose such information as may be reasonably related to the transaction and may require any party to sign such waivers, releases or affidavits as may be necessary to authenticate or investigate the information requested.

(b) All reviews, inspections, reports and other determinations received pursuant to these regulations shall be subject to final review, approval and determination by the Agency.

**SUBCHAPTER 6. SALE OF PROJECTS OWNED
BY NONPROFIT CORPORATIONS TO
LIMITED PARTNERSHIPS**

5:80-6.1 Definitions

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

“Agency” means the New Jersey Housing and Mortgage Finance Agency.

“Cash proceeds” means that portion of the purchase price paid by the partnership to the nonprofit in cash at closing or in successive years following the close.

“Closing” means the date on which title to the development or project is transferred from the nonprofit to the partnership.

“Commitment Letter” means the initial proposal or letter of intention submitted by the prospective purchaser which outlines the parameters of the transaction and the offer.

“Community Development Escrow” (CDE) means that fund established pursuant to N.J.A.C. 5:80-6.5(a)2 or 5:80-6.6(b)4 primarily for use in assisting community improvements or services related to the development.

“Conversion” means the overall transaction in which ownership is transferred from the nonprofit to a partnership.

“Development Cost Escrow” (DCE) means that fund established pursuant to N.J.A.C. 5:80-6.5(a)1 intended primarily for use in improving or supporting the project itself.

“Gross syndication proceeds” means the sum of all capital contributions.

“Multi-Family Rental Investment Program” means the program funded through the use of Agency administrative funds and through payments as provided by N.J.A.C. 5:80-6.4 for the purpose of providing loans to rental projects meeting low and moderate income housing needs.

“Net proceeds” means the gross proceeds of the syndication, which are received from investor limited partners, less the costs of the syndication. The net proceeds include all payments made to or on behalf of the nonprofit and may include interest due on deferred payments. The net proceeds may not be used for any purpose other than to pay transaction costs or to fund the DCE or CDE unless otherwise expressly authorized by the Agency. Net proceeds does not include secondary financing granted on the sale from the nonprofit to the partnership.

“Nonprofit” means the nonprofit owner of the project that is conveying its interest in the profit and assigning its Agency mortgage on the premises to the partnership.

“Operating deficits” means all obligations, to the extent such obligations have not or will not be paid in full out of operating income, arising out of the management and operation of the project including without limitation:

1. Reserves, escrows or fees required by the Agency or by law;
2. Taxes or payments in lieu of taxes;
3. Utility bills;
4. Legal, accounting and other professional fees incurred by the partnership which have received prior approval by the Agency;
5. Insurance premiums; and
6. Judgments or settlements approved by the Agency.

“Original Mortgage Amount” means the amount of the loan which was made to the nonprofit or its predecessors by the Agency for development costs and was financed by bonds issued by the Agency.

“Partnership” means the limited partnership, which qualifies as a limited dividend housing association pursuant to N.J.S.A. 55:16-1 et seq., which takes title to the project from the nonprofit.

“Portfolio Reserve Account” (PRA) means that fund established by the Agency for the primary purpose of funding debt service arrearages, and other operating deficits or capital improvements of any project financed by the Agency that cannot fund these items from normal project income. Funds deposited in the PRA and the investment income earned thereon will be available for use by the Agency for the aforesaid purposes.

“Project Subsidy Reserve Fund” (PSR) means that fund established pursuant to N.J.A.C. 5:806.6(b) intended primarily for maintaining the operative viability of the Section 236 developments.

“Purchase price” means the total amount of capital pledged to the nonprofit sponsor including cash proceeds and secondary financing.

“Stated equity” means an amount equal to 10 percent of the revised total development cost determined by the Agency pursuant to N.J.A.C. 5:80-6.3.

“Surplus cash” means funds, including funds in the DCE and CDE accounts, available after payment of equity distributions, project expenses, operating deficits, including the full funding of all required reserve accounts and proposed capital improvements plus:

1. Two to six months of the annual budgeted project expense for senior citizen projects; or
2. Four to 12 months of the annual budgeted project expense for family projects.