

(f) 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.

(g) 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.

(h) 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.

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.

Case Notes

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.

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.

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.

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.

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.

Amended by R.1983 d.576, effective December 19, 1983.
See: 15 N.J.R. 1408(a), 15 N.J.R. 2154(a).
Added (c) and (d).

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.

Amended by R.1981 d.130, effective May 7, 1981.
See: 12 N.J.R. 631(b), 13 N.J.R. 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 N.J.R. 1055(a), 15 N.J.R. 1758(b).

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

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

See: 24 N.J.R. 1453(a), 24 N.J.R. 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 N.J.R. 4478(a), 28 N.J.R. 1226(a).

Case Notes

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).

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.

Amended by R.1992 d.287, effective July 6, 1992.
See: 24 N.J.R. 1453(a), 24 N.J.R. 2429(a).

References to statutes added.

Case Notes

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).

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 HOUSING AND DEVELOPMENT, DEPARTMENT OF COMMUNITY AFFAIRS, IN AN APPLICATION FOR REGISTRATION TO CONVERT THE BUILDING TO A CONDOMINIUM OR COOPER-

ATIVE. 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: