

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.

As amended, R.1979 d.349, 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).

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

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

See: 15 N.J.R. 1055(a), 15 N.J.R. 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 N.J.R. 2032(a), 16 N.J.R. 2522(a).

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

See: 27 N.J.R. 4478(a), 28 N.J.R. 1226(a).

**5:26-3.2 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 8½ x 11 inches nor more than 8½ 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.

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

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

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

Administrative change.

See: 28 N.J.R. 4867(a).

**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 of 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.

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

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

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

**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.

**5:26-3.4 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.

As amended, R.1983 d.446, eff. October 17, 1983.  
See: 15 N.J.R. 1055(a), 15 N.J.R. 1758(b).  
Added last sentence.

**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.

**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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## SUBCHAPTER 4. PUBLIC OFFERING STATEMENT

**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.

As amended, R.1983 d.446, eff. October 17, 1983.  
See: 15 N.J.R. 1055(a), 15 N.J.R. 1758(b).

In (a), added 1-3. Also deleted old and added new (d).  
Administrative change.  
See: 28 N.J.R. 4224(a).

**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 communi-

ty 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;

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.

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).

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

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

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

Substantially amended text.

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

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.

#### 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 face type:

#### NOTICE TO PURCHASERS

THIS PUBLIC OFFERING STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY. PURCHASERS SHOULD ASCERTAIN FOR THEMSELVES THAT THE PROPERTY OFFERED MEETS THEIR PERSONAL REQUIREMENTS. THE NEW JERSEY DIVISION OF HOUSING AND DEVELOPMENT 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.

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

See: 12 N.J.R. 631(b), 13 N.J.R. 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 N.J.R. 1055(a), 15 N.J.R. 1758(b).

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

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

See: 16 N.J.R. 2032(a), 16 N.J.R. 2522(a).

Added "and development."

#### 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.

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

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

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

#### 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.

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

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

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

#### 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.

#### 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.