

(b) The Agency may, after compliance with the notice requirements of (a) above, and finding of fact that a violation for which revocation could be ordered has occurred, issue a cease and desist order in lieu of an order of revocation.

(c) A developer to whom a notice of revocation or a cease and desist order is issued shall have the right to contest the notice or order in an administrative hearing, in accordance with N.J.A.C. 5:26-11.3.

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

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

References to the APA and UAPR added at (a).

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

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

In (a) 5 added color, religious principles, ancestry, affectional or sexual orientation, or any other basis prohibited, and added (c).

**5:26-2.12 Cease and desist orders; injunctions**

(a) The Agency may issue an order requiring a person to cease and desist from an unlawful practice or an order requiring him to take such other affirmative action as in the judgment of the Agency will carry out the purposes of the Act or these regulations upon the Agency's determination, after notice and hearing, that a developer has:

1. Violated any provision of the Act;
2. Directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional or sales methods to offer or dispose of a unit;
3. Made any material change in the plan of disposition or development of the subdivision subsequent to the order of registration without obtaining prior approval from the Agency;
4. Disposed of any lot, parcel, unit or interest in a planned real estate development or retirement community which has not been registered with the Agency; or
5. Violated any lawful order, rule or regulation of the Agency.

(b) Upon the determination of the Agency in writing, based on a finding of fact that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order including therein a provision that, upon request, a hearing will be held within 10 days of such request to determine whether or not the temporary cease and desist order shall become permanent. A copy of any temporary cease and desist order shall be sent to the developer by certified mail.

(c) The Agency may, if it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of the Act or a rule, order or regulation of the Agency, bring an action in Superior Court to enjoin the acts or practices and to enforce compliance with the Act or regulations herein.

**5:26-2.13 Annual report**

Within 30 days after the anniversary date of the latest Order of Registration and while the developer retains any interest in the development or retirement community, the developer shall file on a form designated by the Agency an annual report reflecting any material changes in information contained in the original application for registration. This shall not diminish the obligation of the developer to notify the Agency of material changes as they occur. The annual report shall contain a yearly audit of association funds.

**Law Reviews and Journal Commentaries**

Representing a Purchaser in a Distressed Planned Unit Development. J. David Ramsey, 153 N.J.L.J. 34 (1993).

**5:26-2.14 Order terminating responsibility**

Upon a determination by the Agency that an annual report is no longer necessary for the protection of the public interest or that the developer no longer retains any interest and no longer has any contractual, bond or other obligations in the development or retirement community, the Agency shall issue an order terminating the responsibilities of the developer under the Act.

**5:26-2.15 Registration in this State, other states or with the Federal Government**

Any developer who desires to register a planned real estate development or retirement community which has been registered in this State, in other states or with the Federal Government and the requirements of that registration are substantially similar to those imposed by this chapter, may submit a certified copy of the approved application for registration filed in such other jurisdiction or with such other state agency or with the Federal Government and a certified copy of the letter of approval or other written approval thereof. In the event the Agency finds, upon review, that the approval substantially conforms to the standards and requirements imposed by the Act and by this chapter, the Agency may register such planned real estate development or retirement community; provided however, prior to such registration the Agency may require submission of such supplemental documents and information as it may deem necessary.

**5:26-2.16 Consolidated filing**

A developer may register additional property pursuant to the same common promotional plan as those previously registered by the Agency by submitting another application providing such additional information as may be necessary to register the additional lots, parcels, units or interests.

**5:26-2.17 P.U.D. and P.U.R.D.**

(a) The developer of a planned unit development or planned unit residential development shall register the development pursuant to N.J.A.C. 5:26-3 hereof regardless of whether the developer intends to offer the lots, parcels,

units or interests to the public or to a builder or builders or to another developer.

(b) In the event the developer offers or intends to offer a number of lots, parcels, units or interests in a P.U.D. or P.U.R.D. to a builder or builders who will construct dwelling units thereon with the intention of offering them to the public, the developer and the builder may submit a joint application for registration or the developer may submit an application for registration and file an amendment pursuant to N.J.A.C. 5:26-3 hereof when the lots, parcels, units or interests are conveyed to the builder.

(c) The items requested in N.J.A.C. 5:26-3.1(a)1, 3, 4, 16, 17, 19 and 20 shall be submitted for both the developer and the builder.

(d) The warranty provisions of N.J.A.C. 5:26-7 shall be provided by the person who constructs the particular improvements so warranted.

R.1979 d.439. eff. November 1, 1979.

See: 11 N.J.R. 497(a), 11 N.J.R. 610(b).

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

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

Administrative change.

See: 29 N.J.R. 550(b).

In (c), amended N.J.A.C. references.

### SUBCHAPTER 3. APPLICATION FOR REGISTRATION

#### 5:26-3.1 Contents of application for registration

(a) The application for registration shall contain the following documents and information:

1. An irrevocable appointment of the Agency to receive service of any lawful process in any noncriminal proceeding arising under the Act against the developer or agents of the developer;

2. The states or other jurisdiction, including the Federal Government, in which an application for registration or similar documents have been or will be filed and any order, judgment or decree entered in connection therewith by the regulatory authorities in each of the jurisdictions or by any court or administrative body thereof;

3. The name, address and principal occupation for the past five years of every officer of the applicant or person occupying a similar status and of any person performing similar management functions; the extent and nature of any such person's interest in the applicant or the development as of a specified date within 30 days prior to the filing of the application for registration;

4. Copies of the articles of incorporation, with all amendments thereto, if the developer is a corporation; copies of all instruments by which the trust is created or declared, if the developer is a trust; copies of the articles of partnership or association and all other organization papers if the developer is organized under another form. In the event the developer is not the legal title holder to the property upon which the development is or is to be constructed the above documents shall be submitted for both the developer and the legal title holder;

5. A legal description by metes and bounds or other acceptable means of the lands to be registered, together with a map showing the proposed or actual subdivision and showing the dimensions of the lots, parcels, units or interests, as available, and the relation of such lands to existing streets, roads and other improvements. The aforesaid map shall be drawn to scale, signed and sealed by a licensed professional engineer or land surveyor;

6. Copies of the deed or other instrument establishing title in the developer and title search, title report or title certificate or binder issued by a licensed title insurance company;

7. A statement concerning any litigation, orders, judgments or decrees which might affect this offering;

8. In the event that the application for registration is for the conversion of a vacant building, an affidavit to that effect shall be submitted by the developer;

9. In the event that the application for registration is for the conversion of a building occupied by residential tenants, an affidavit of service of the proposed Public Offering Statement as required by N.J.A.C. 5:26-9.3 shall be submitted;

10. In the event that the application for registration is for a newly-constructed property, evidence of registration under the New Home Warranty and Builders Registration Act (N.J.S.A. 46:3B-1 et seq.) shall be submitted;

11. A statement that the lots, parcels, units or interests in the development will be offered to the public and sold or alienated without regard to marital status, sex, race, color, creed, religious principles, national origin, ancestry, affectional or sexual orientation, or any other basis prohibited by the Law Against Discrimination (N.J.S.A. 10:5-1 et seq.);

12. A statement of the present condition of access to the development and the existence of any adverse conditions that affect the development that are known, should be known or are readily ascertainable;

13. Copies of all contracts and agreements which the purchaser may be required to execute in connection with this offering;

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.

### 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;