

**CHAPTER 26**

**PLANNED REAL ESTATE DEVELOPMENT FULL DISCLOSURE ACT REGULATIONS**

**Authority**

N.J.S.A. 45:22A-35.

**Source and Effective Date**

R.2006 d.270, effective June 22, 2006.  
See: 37 N.J.R. 2755(a), 38 N.J.R. 3019(b).

**Chapter Expiration Date**

Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, expires on June 22, 2011.

**Chapter Historical Note**

Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, became effective November 22, 1978 as R.1978 d.403. See: 10 N.J.R. 416(c), 11 N.J.R. 8(a).

Pursuant to Executive Order No. 66(1978), Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was readopted as R.1986 d.129, effective March 27, 1986. See: 18 N.J.R. 392(a), 18 N.J.R. 841(a).

Pursuant to Executive Order No. 66(1978), Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was readopted as R.1991 d.123, effective February 7, 1991. See: 22 N.J.R. 1702(a), 23 N.J.R. 687(c).

Pursuant to Executive Order No. 66(1978), Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was readopted as R.1996 d.94, effective January 24, 1996. See: 27 N.J.R. 4478(a), 28 N.J.R. 1226(a).

Pursuant to Executive Order No. 66(1978), Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was readopted as R.2001 d.48, effective January 11, 2001. See: 32 N.J.R. 1272(a), 33 N.J.R. 550(c).

Chapter 26, Planned Real Estate Development Full Disclosure Act Regulations, was readopted by R.2006 d.270, effective June 22, 2006. See: Source and Effective Date.

**Law Review And Journal Commentaries**

Representing a Purchaser in a Distressed Planned Unit Development. J. David Ramsey, 153 N.J.Law. 34 (Mag.) (May/June 1993).

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**APPENDIX: PLANNED REAL ESTATE DEVELOPMENT FULL DISCLOSURE REGULATIONS**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**5:26-1.1 Introduction**

The Planned Real Estate Full Disclosure Act (Chapter 419, P.L. 1977, N.J.S.A. 45:22A-21 et seq.) became effective November 22, 1978. These rules have been adopted to enable the Division of Codes and Standards to implement the Act and to enable owners of property affected to more easily and more fully comply with the requirements of the Act.

Amended by R.1981 d.130 effective May 7, 1981.  
 See: 12 N.J.R. 631(b), 13 N.J.R. 259(a).  
 "and Urban Renewal" deleted after "division of Housing".  
 Amended by R.1984 d.434, effective 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).

**5:26-1.2 Affirmative determination**

(a) The Act provides for the issuance of an order of registration upon an affirmative determination of the Division that:

1. The developer can convey or cause to be conveyed the lots, parcels, units or interests offered for disposition, if the purchaser complies with the terms of the offer; and
2. There is reasonable assurance that all proposed improvements can be completed as represented; and
3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the Division in subchapter 5 hereof and afford full and fair disclosure; and

4. The developer, its officers and/or principles have not been convicted of a crime involving any aspect of the real estate sales business in this State, the United States, or any other state or foreign country within the past 10 years; and

5. The developer, its officers and/or principals have not been subject to any permanent injunction or final administrative order restraining a false or misleading plan involving real property disposition, the seriousness of which in the opinion of the Agency warrants the denial of registration; and

6. The public offering statement requirements have been satisfied.

**5:26-1.3 Definitions**

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

"Act" means the Planned Real Estate Development Full Disclosure Act, Chapter 419, P.L. 1977, N.J.S.A. 45:22A-21 et seq., as amended; provided, however, that "act" means the Retirement Community Full Disclosure Act, P.L. 1969, c.215 (N.J.S.A. 45:22A-1 et seq.) when applied to any portion of a retirement community issued a notice of filing or registered pursuant thereto.

"Advertising" means and includes the publication or causing to be published of any information offering for disposition or for the purpose of causing or inducing any other person to purchase an interest in a planned real estate development or retirement community, including the sales contract to be used and any photographs or drawings or artist's representation of physical conditions or facilities on the property existing or to exist by means of any:

1. Newspaper or periodical;
2. Radio or television broadcast;
3. Written, printed or photographic matter;
4. Billboards or signs;
5. Display of model houses or units;
6. Material used in connection with the disposition or offer of the development by radio, television, telephone or any other electronic means; or
7. Material used by developers or their agents to induce prospective purchasers to visit the development, particularly vacation certificates which require the holders of such certificates to attend or submit to a sales presentation by the developer or his agents.

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; or

11. Of any form of timesharing.

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).  
 Amended by R.2007 d.76, effective March 5, 2007.  
 See: 38 N.J.R. 4970(a), 39 N.J.R. 767(a).  
 In (a)7, inserted a comma following "that", and deleted ", timesharing" following "cooperatives"; in (a)10xii, substituted "; or" for a period at the end; and added (a)11.

**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.