

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, unless a reduction or termination is imposed by the United States Department of Housing and Urban Development or other issuing authority and results in a renewal of the subsidy to the project that will be sufficient to maintain the financial viability of the project through the end of the original mortgage term.

(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).

Amended by R.2003 d.88, effective March 3, 2003.

See: 34 N.J.R. 3415(a), 35 N.J.R. 1267(b).

In (c), rewrote 3.

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.

5. Preparation and review of contracts and purchase orders concerning the housing project;

6. Advising the sponsor and managing agent with regard to tenant and lease matters, but not including summary dispossess actions; and

7. Such other services as the sponsor may direct to be performed in connection with and respecting the operations of the project.

(b) Sponsors may engage the services of an attorney to perform tenancy related court actions including the enforcement of leases, collection of rent and dispossession of tenants. For cooperative or condominium projects, sponsors may engage the services of an attorney to perform court actions related to the collection of association dues or carrying charges and the enforcement of subscription agreements, stock certificates or other forms of agreements related to the cooperative or condominium project.

(c) Sponsors may engage the services of an attorney to perform services outside the scope of services in (a) and (b) above, as the need arises for the project. Such services include, but are not limited to, litigation, mortgage loan close-outs, conversion closings and issues requiring special expertise.

5:80-31.3 Maximum fees

(a) The maximum fees that can be paid from project funds for Agency approved attorney services are as follows:

- 1. General legal matters . . . up to \$150.00/hour;
- 2. Tenancy actions, as follows:
 - i. For each of the first two cases (requiring court appearance) on the same day . . . up to \$120.00;
 - ii. For each additional case presented on the same day . . . up to \$90.00; and
 - iii. For each case prepared for trial but resolved prior to actual court appearance . . . up to \$60.00; and
- 3. General litigation, as follows:
 - i. Non-trial hours . . . up to \$210.00/hour; and
 - ii. Trial hours . . . up to \$240.00/hour.

(b) For conversion closing, mortgage close-outs, special expertise and all other matters not covered by (a) above, housing sponsors shall submit a fee structure to the Agency for approval.

(c) Paralegal and secretarial services in connection with (a) and (b) above shall be included within the fees outlined above. No additional fees will be paid for paralegal or secretarial services.

(d) Additional compensation may be paid for reasonable out-of-pocket expenses, approved by the Agency, including

copying, travel, postage, filing fees, transcripts, and expert witnesses, etc.

(e) The above fees may not exceed fees charged to other clients for comparable work.

(f) The maximum fees in (a) above will be adjusted annually based on the overall Consumer Price Index for New York-Northeastern New Jersey as published by the United States Department of Labor, Bureau of Labor Statistics as of September 30 of the year preceding the year for which the adjustment is to be implemented. The increases will be effected through a notice of administrative changes published in the New Jersey Register. The Agency will notify housing sponsors of the new rates.

Amended by R.2004 d.449, effective December 6, 2004.
See: 36 N.J.R. 3654(a), 36 N.J.R. 5336(a).
Rewrote (a); added (f).

5:80-31.4 Agency approval

(a) Housing sponsors desiring to engage the services of an attorney pursuant to the rules within this subchapter shall obtain the written approval of the Agency. Sponsors shall submit a proposal outlining the scope of services to be performed by the attorney.

(b) The Agency shall approve the engagement of attorney services provided the services and fees to be charged fall within those permitted by N.J.A.C. 5:80-31.2(a) or (b) and 31.3, respectively. For services outlined in N.J.A.C. 5:80-31.2(c), the Agency shall approve the engagement of an attorney provided the services are necessary or beneficial to the project, as determined by the Agency, and there are sufficient project funds to pay for such services. The Agency does not guarantee the availability of funds.

(c) All sponsors shall enter into a written attorney engagement agreement using forms approved by the Agency.

SUBCHAPTER 32. HOUSING INVESTMENT SALES

5:80-32.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

“Available cash” means all the cash available to an eligible LD sponsor upon the closing of a housing investment sale (after payment of all transaction costs) including, but not limited to:

- 1. The cash portion of the purchase price paid by the buyer;

2. Any obligations or instruments of indebtedness of the buyer in favor of the seller constituting a portion of the purchase price as provided in these rules; and

3. Any accumulated residual receipts, that are not subject to recapture by the United States Department of Housing and Urban Development.

“Eligible LD sponsor” means a for-profit corporation or partnership organized under, and remaining subject to, the Limited Dividend Law, L. 1949, c.184, § 1 et seq., as amended (N.J.S.A. 55:16-1 et seq.), that owns and operates an Agency-financed, multifamily, rental housing project that, in each of the three fiscal years preceding the housing investment sale, has:

1. Produced a positive cash flow from operations; and
2. Been current in all debt service and escrow payments required by the Agency.

“Housing investment sale” means a transaction that promotes the provision or maintenance of low and moderate income housing, as defined pursuant to the Fair Housing Act, through the sale by an eligible LD sponsor of an Agency-financed, multifamily, rental housing project to a qualified housing sponsor upon the following terms:

1. The buyer executes a deed restriction (and such other instruments reasonably required by the Agency) at the closing of the housing investment sale to ensure that the project will remain affordable to low and/or moderate income tenants as provided in the original mortgages; and subject to Agency restrictions regarding tenant income eligibility, tenant selection, project reserves, return on equity rent increases and the provisions at N.J.S.A. 55:14K-7b for 35 years after the expiration of the term of the project mortgage. The foregoing documents shall also provide for the payment of a servicing fee to the Agency for monitoring the restrictions that apply to the project. Such fee shall not be less than the servicing fee being paid by the eligible LD sponsor seller at the time of the housing investment sale; and

2. The eligible LD sponsor invests an amount equal to 50 percent of the maximum additional return in the Housing Investment Sale.

“Housing Investment Sales Account” means an account established under the Agency’s administrative fund. Monies on deposit in the account may be used, at the Agency’s sole discretion, to provide loans or grants that will promote the provision or maintenance of low and moderate income housing as defined pursuant to the Fair Housing Act.

“Maximum additional return” means the additional return payable to the owners of an eligible LD sponsor under the Limited Dividend Law but not under the Housing and Mortgage Finance Agency (HMFA) Law, N.J.S.A. 55:14K-1 et seq., consisting of:

1. Cash invested by the owners in the eligible LD sponsor that has not previously been recognized by the Agency as investment in a housing project (including, but not limited to, those amounts invested by the owners at the initial Agency mortgage closing; any DCE/CDE funds; and the reserve for repair and replacement account, the operating reserve account and the tax and insurance escrow accounts (being transferred to the buyer in conjunction with the housing investment sale);

2. A cumulative annual return of eight percent on the investment described in 1 above;

3. If project revenues representing the return described in 2 above have been invested in the project’s residual receipts account or otherwise, any income earned on said annual return;

4. An amount equal to the total reduction or amortization of the original principal owing on the eligible LD sponsor’s mortgage loan from the Agency; and

5. An amount equal to the increase in the market value of the eligible LD sponsor’s realty and tangible personalty during the period such assets were owned by the eligible LD sponsor, such increase to be determined by subtracting the following from the purchase price for those assets:

- i. The eligible LD sponsor’s investment in the project as determined by the Agency under the HMFA Law; and

- ii. The original principal amount of the eligible LD sponsor’s mortgage indebtedness to the Agency.

“Purchase price” means, in a housing investment sale, a sum equal to the fair market value of the realty and tangible personalty transferred to the buyer in the sale said sum to be comprised of:

1. Assumption of the eligible LD sponsor’s first mortgage loan from the Agency and any other indebtedness of the eligible LD sponsor secured by project assets;

2. Cash paid by the buyer at the closing of the housing investment sale; and

3. Such obligations or instruments of indebtedness of the buyer in favor of the seller as the Agency may approve pursuant to N.J.A.C. 5:80-32.3(c).

“Residual receipts” means the balance of funds (including Development Cost Escrow and Community Development Escrow funds) remaining after the deduction of the following items from the cash and the investment accounts of an eligible LD sponsor:

1. Debt service arrearages;

2. Current unpaid invoices;
3. 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, of the latest Agency approved annual budget;
4. Full funding of all required reserve accounts;
5. Anticipated or proposed capital improvements;
6. Any other current obligations of the qualifying development; and
7. Accrued but undistributed return on equity.

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

Added "Residual receipts"; amended "Available cash", "Housing investment sale", "Maximum additional return", and "Purchase price"; and changed the name of "MAR Revolving Account" to "Housing Investment Sale Account".

5:80-32.2 Realization of maximum additional return

Upon the approval of its members in the exercise of their authority under the Fair Housing Act, N.J.S.A. 52:27D-321f, the Agency shall waive any or all of the investment-return restrictions imposed under the HMFA Law, N.J.S.A. 55:14K-1 et seq., in order to permit an eligible LD sponsor to realize, from available proceeds upon the closing of a housing investment sale, a maximum additional return, as well as any return otherwise allowable under the HMFA law. Sponsors who agree to comply with the requirements of this subchapter will meet the waiver criteria.

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).
Substituted "proceeds" for "cash".

5:80-32.3 Application procedure

(a) The eligible LD sponsor proposing to sell its project in a housing investment sale must submit to the Executive Director of the Agency a written request for approval of the sale, containing a detailed description of the terms of the sale. The request must also include a detailed project report presenting the current physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information and may conduct its own review of the housing project's condition and operation. Full and complete disclosure of all material facts relating to the proposed sale must be made to the Agency in the request for approval, and the seller and all other parties to the transaction shall be under a continuing obligation to disclose such material facts through the closing of the sale.

(b) In selecting the prospective buyer for the project, 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 offer.

(c) The housing investment sale shall include an assignment from the seller and an assumption by the buyer of all existing project indebtedness. If the sale includes any supplemental financing, the amount of such financing shall not exceed the debt that the project can reasonably sustain from project income through the remainder of the Housing Assistance Payments (HAP) contract or, if no HAP contract exists, through the remainder of the original mortgage term, without jeopardizing the viability of the project as a low-income project for the remainder of the original mortgage term. Supplemental financing may be provided by the Agency or other lender or may be provided by the seller. The terms of any supplemental financing shall be subject to the approval of the Agency provided, however, that: in no event may the aggregate principal repayment of such indebtedness result in amounts in excess of the amounts payable

to the seller under N.J.A.C. 5:80-32.6(b)3i and ii; all such indebtedness must be subordinate to the Agency's first mortgage lien and security interest in the project; and the buyer shall agree not to prepay the Agency's first mortgage. The Agency's approval of a sale requiring supplemental financing shall be subject to the receipt of an opinion by nationally recognized bond counsel, in form and substance satisfactory to the Agency and the Attorney General, that such financing is permitted under any Bond resolution to which the payments under the Agency's mortgage on the project are pledged, and does not adversely affect the Federal and State tax treatment of any outstanding bonds, notes or other obligations of the Agency. The cost of such opinion shall be borne by the seller.

(d) As a condition of approving the sale, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller under (a) above and the independent review by the Agency. Deferred maintenance must be completed no later than the closing of the sale, unless otherwise agreed by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency.

(e) As a condition of approving the sale, the Agency will also require payment of debt service arrearage, current unpaid invoices, total operating expenses covering three months (for senior citizen projects) and six months (for family projects), full funding of all reserves and any other obligations of the project.

(f) Upon assignment and assumption of the Agency's mortgage, provisions shall be included in the deed restriction clearly specifying the Agency's right to enforce these regulations for the 35-year period after the expiration of the term of the Agency's first mortgage.

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

In (c), inserted text "Supplemental Financing may be provided ... prepay the Agency's first mortgage." and "is permitted under any Bond resolution ... project are pledged, and"; and in (f), substituted reference to inserting a provision in the deed for reference to modifying the mortgage, and inserted reference to 35-year post expiration period.

5:80-32.4 Required documents

(a) To assist the Agency in its review of an eligible LD sponsor's request for approval of a housing investment sale, as described in N.J.A.C. 5:80-32.3(a), the seller shall supply the Agency with the following documents, in form and substance satisfactory to the Executive Director:

1. Administrative questionnaires for the buyer;
2. Copies of the buyer's organizational documents;
3. Any Previous Participation Certificates (form 2530) for the buyer;
4. A physical inspection report approved by the Agency;

5. A financial report on project operations approved by the Agency; and

6. Any other documents or other information requested by the Agency that would reasonably assist it in reviewing the proposed housing investment sale.

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

Deleted (a)4, relating to a buyer's certified financial statement, and recodified former (a)5 through (a)7 as (a)4 through (a)6.

5:80-32.5 Fee

The eligible LD sponsor seller shall pay a processing fee to the Agency in such amount, as determined by the Agency, as will reimburse the Agency for its administrative cost (that is, Agency staff time and actual expenses incurred) in reviewing and processing the seller's request to engage in a housing investment sale. With its initial request for approval of the sale, the seller shall submit a non-refundable \$5,000 deposit that shall be credited toward the processing fee. The seller will be billed for any balance due at the closing of the sale, and said balance shall be due and payable at that time.

5:80-32.6 Closing

(a) At the closing of any approved housing investment sale, the following documents, in form and substance satisfactory to the Agency, shall be delivered:

1. Legal opinions from the seller's and buyer's attorneys to the effect that the respective entities' participation in the housing investment sale is fully lawful; and

2. Any legal opinion of nationally recognized bond counsel reasonably required by the Agency relating to the proposed housing investment sale or its effect upon any outstanding obligations of the Agency.

(b) At the closing of any approved housing investment sale, the following shall occur:

1. The eligible LD sponsor shall transfer title to the realty and tangible personalty comprising its project, as well as any required project accounts, escrows and reserves, to the buyer;

2. The buyer shall pay to the eligible LD sponsor the purchase price for the project by assuming the project indebtedness of the eligible LD sponsor and paying the balance of the purchase price in cash and indebtedness of the buyer in favor of the seller; and

3. The Agency shall review and approve the following payments to be made from the available cash of the eligible LD sponsor:

i. To the eligible LD sponsor, an amount equal to its investment in the project, as determined under the HMFA Law payable in cash and/or permitted indebtedness of the buyer;

ii. To the eligible LD sponsor, an amount equal to 50 percent of its maximum additional return payable in cash and/or permitted indebtedness of the buyer;

iii. To the Housing Investment Sales Account, an amount equal to 50 percent of the maximum additional return of the eligible LD sponsor payable in cash and/or permitted indebtedness of the buyer to the seller assigned by the seller to the Agency;

iv. To the State Treasurer, the balance of eligible LD sponsor's available cash, as required under the Limited Dividend Law payable in cash only;

v. In the case of indebtedness of the buyer in favor of the seller, the amount payable to the Agency under (b)3iii above representing such indebtedness is not required to be paid in cash at closing. Instead, the Agency shall receive such amount through assignment by the seller to the Agency of 50 percent of the annual repayment of the indebtedness of the buyer in favor of the seller.

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

In (b)2, inserted reference to payment by buyer's indebtedness to the seller; in (b)3i and (b)3ii, inserted reference to payment in cash and/or indebtedness; in (b)3ii, substituted "Housing Investment Sales Account" for "MAR Revolving Account"; in (b)3iv, inserted "payable in cash only"; and added (b)3v.

5:80-32.7 Developer's fee and return on equity

(a) The Agency may credit buyers with a developer's fee of 10 percent of the purchase price at the time of closing. The developer's fee may only be pledged as equity in the project. No project funds or available cash may be used to pay a developer's fee to the buyer.

(b) Buyers shall be eligible to earn a return on equity based upon any equity investment in the project including the developer's fee which is being pledged as equity. The rate of return shall be established pursuant to N.J.A.C. 5:80-3.3(b), unless the buyer elects to qualify for enhanced return on equity under (c) below. During the regulatory period, after expiration of the term of the Agency mortgage, the return on equity restrictions shall continue as provided in this section until the owner funds an operating reserve account in the amount provided in N.J.A.C. 5:80-5.10(b)6. The operating reserve account shall be maintained until the expiration of the deed restriction and administered as provided in N.J.A.C. 5:80-5.10(b)6. If the operating reserve account is used, the return on equity restrictions hereunder shall be reinstated until the operating reserve account is again fully funded.

(c) Buyers which agreed to fund a capital improvement account, and agree to preserve the low-income status of the project for an additional 15 years, as provided below, may receive enhanced return on equity during the term of the Agency's mortgage through a split of the project's residual receipts on a 50% basis with the Agency.

1. The capital improvement account would be in addition to the reserve for repair and replacement account, the operating reserve account, and any rehabilitation expenditures escrow funded in connection with secondary financing. The capital improvement account shall be used for capital improvements, repairs, maintenance and any other expense of the project which will help ensure that the project is maintained as safe and sanitary rental housing during the mortgage term and thereafter. Ten percent of the annual residual receipts must be deposited into the capital improvement account prior to distribution of the residual receipts between the Agency and owner;

2. The buyer shall execute a deed restriction which preserves the project as affordable rental housing for an additional 15-year period, subject to the same Agency restrictions as are applicable during the 35-year period under the definition of housing investment sales in N.J.A.C. 5:80-32.1;

3. The Agency's annual share of the residual receipts shall be deposited into the Housing Investment Sales Account;

4. Buyers which elect to participate in this option must make such election at the time of closing. Buyers may elect to participate subsequent to closing, provided they fund the capital improvement account with an amount equivalent to the amount which would have been required since closing and distribute 50 percent of the accumulated residual receipts to the Agency for deposit into the Housing Investment Sales Account.

(d) The distribution of amounts to the buyer pursuant to this section shall be subject to those conditions set forth at N.J.A.C. 5:80-3.4.

New Rule, R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

APPENDIX

Example of Application of Subchapter Rules

(a) A group of individuals formed an eligible LD sponsor and invested \$1,500,000 in it: \$1,000,000 was invested in the physical assets of the project (that is, its realty and tangible personalty) and was recognized as investment in the project under the HMFA Law; \$500,000 represented promoters' fees and was not recognized as investment in the project under the HMFA Law. The eligible LD sponsor received a non-recourse loan of \$9,000,000 from the HMFA.

(b) If the Agency had recognized the entire \$1,500,000 as investment in the project, which it was not required to do, the eligible LD sponsor would have been entitled to an additional return on its investment of \$40,000 in each year of operation. For 15 years the project generated revenues sufficient to cover this additional \$40,000. The \$600,000 (15 years x \$40,000) aggregate representing this additional re-

turn, along with other surpluses, was invested and earned a total of \$200,000 in interest income over the 15 years.

(c) Fifteen years after the formation of the eligible LD sponsor, a qualified housing sponsor proposes to buy the physical assets of the eligible LD sponsor in a housing investment sale. At the time of the sale, the eligible LD sponsor has repaid \$1,800,000 of the HMFA loan and has received the full annual return on investment permitted under the HMFA Law. At the closing of the housing investment sale, the project's residual receipts, as defined in N.J.A.C. 5:80-30.1 were \$2,200,000. The purchase price paid by the buyer to the eligible LD sponsor is \$10,900,000, paid by assuming the \$7,200,000 mortgage loan still outstanding and paying \$3,700,000 cash at closing.

(d) At the closing of the housing investment sale, \$200,000 of the purchase price is applied to transaction costs. Thus, the available proceeds of the eligible LD sponsor is \$5,700,000, computed as follows: \$3,500,000 (the cash portion of the Purchase Price, \$3,700,000, less \$200,000 in transaction costs), plus \$2,200,000 (the residual receipts). (See N.J.A.C. 5:80-32.1, "available cash".)

(e) The maximum additional return is \$4,000,000, computed as follows:

1. \$500,000 cash invested by the owners of the eligible LD sponsor that was not recognized as investment in the project (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 1), plus

2. \$600,000 representing cumulative annual return on the \$500,000 described in (e)1 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 2), plus

3. \$200,000 investment income earned on the \$600,000 described in (e)2 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 3), plus

4. \$1,800,000 representing amortization of principal on the Agency's mortgage loan (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 4), plus

5. \$900,000 in market appreciation of realty and tangible personalty (that is, the purchase price of \$10,900,000 less investment in the project of \$1,000,000 and original mortgage loan of \$9,000,000, as provided in N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 5).

(f) At closing, the following payments are made from the available proceeds:

1. To the eligible LD sponsor, \$1,000,000, representing its investment in the project, as determined under the HMFA Law (see N.J.A.C. 5:80-32.6(b)3i);

2. To the eligible LD sponsor, \$2,000,000, representing 50 percent of its maximum additional return (see N.J.A.C. 5:80-32.6(b)3ii);

3. To the Housing Investment Sales Account, \$2,000,000 representing 50 percent of the maximum additional return (see N.J.A.C. 5:80-32.6(b)3iii); and

4. To the State Treasurer, \$700,000, representing the balance of available proceeds (see N.J.A.C. 5:80-32.6(b)3iv).

Amended by R.1997 d.102, effective March 3, 1997.

See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

In (d), (f), and (f)4, substituted "proceeds" for "cash"; and in (f)3, substituted "Housing Investment Sales Account" for "MAR Revolving Account".

SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

5:80-33.1 Introduction

(a) Section 42 of the Internal Revenue Code of 1986 (Code), 26 U.S.C. § 42, establishes a low income housing tax credit that may be applied against the Federal income tax of persons or associations who or which have invested in certain buildings providing housing for families of low-income. As the housing credit agency for the State of New Jersey, the New Jersey Housing and Mortgage Finance Agency (NJHMFA) allocates these credits to qualified taxpayers and thereafter monitors their compliance with Section 42 of the Code. The rules in this subchapter set forth the standards and procedures used by NJHMFA to perform its allocation and monitoring responsibilities and this subchapter represents the qualified allocation plan for New Jersey required by Section 42 of the Code.

(b) In each calendar year, the total dollar value of the credits that can be allocated under these rules, except for the credits issued in connection with buildings financed with the proceeds of certain tax-exempt bonds, is limited by the State housing credit ceiling provided in Section 42 of the Code. NJHMFA, therefore, has determined to award these limited credits on a competitive basis. Applicants seeking an allocation of these credits must apply under one of the cycles set forth in N.J.A.C. 5:80-33.4, 33.5, 33.6 or 33.7. NJHMFA ranks the applications received in each cycle according to the respective point scales provided in N.J.A.C. 5:80-33.15, 33.16, 33.17 and 33.18. The credits assigned to each cycle are then reserved for the highest ranking applications that meet the eligibility requirements set forth in N.J.A.C. 5:80-33.12.

(c) Credits issued in connection with buildings financed with the proceeds of tax exempt bonds subject to the volume cap restrictions provided in Section 42(h)(4) of the Code are not limited by the State housing credit ceiling and, therefore, are not allocated on a competitive basis. Applicants seeking such "volume cap tax credits" are directed to the provisions of N.J.A.C. 5:80-33.9.

(d) It is the burden of every applicant to comply literally with the requirements of these rules and to ensure that any application presented to NJHMFA is clear, unambiguous and complete in all respects at the time of submission.

(e) These rules shall be construed and administered in a manner consistent and in accordance with the Code and regulations promulgated thereunder.

(f) Compliance with the requirements of the Code is the sole responsibility of the owner of the building for which the credit is allowable. NJHMFA makes no representations to the owner or anyone else as to compliance with the Code, Federal regulations issued under the Code, or any other laws or regulations governing Low Income Housing Tax Credits, or as to the financial viability of any project. All applicants should consult their accountant, tax attorney or advisor as to the specific requirements of Section 42 of the Code governing the Low Income Housing Tax Credit Program.

(g) These rules have been promulgated in a manner consistent with the smart growth initiatives required under Executive Order No. 4(2002).

Amended by R.1998 d.279, effective June 1, 1998.

See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).

Rewrote (a); added new (b) through (d); and recodified former (b) and (c) as (e) and (f).

Amended by R.1999 d.120, effective April 5, 1999.

See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).

In (b) and (c), changed N.J.A.C. references.

Amended by R.2002 d.233, effective July 15, 2002.

See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).

Added (g).

Amended by R.2003 d.300, effective July 21, 2003.

See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).

In (a), (b), amended N.J.A.C. reference.

5:80-33.2 Definitions

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

"Brownfields site" means, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., "any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of contamination." For the purposes of this subchapter, the proposed redevelopment for the site under consideration must also have an approved New Jersey Department of Environmental Protection Remedial Action Work Plan.

"COAH" means the New Jersey State Council on Affordable Housing.

"COAH obligation" means a low or moderate-income rental project in a plan that is either COAH-certified or under COAH's jurisdiction as the result of a petition to receive substantive certification or to amend a plan that has previously received substantive certification.