

## ANNUAL REPORT INFORMATION SHEET

Your offering has now been registered with the Planned Real Estate Development Section of the Bureau of Homeowner Protection. Along with your ability to offer the units for sale come certain responsibilities. One of these responsibilities is the requirement, pursuant to N.J.A.C. 5:26-2.13, to file annual reports within 30 days of the anniversary date of the registration. The annual report package must include a copy of the budget and a copy of the most recent audit and, when the developer is still in control of the board of the association, proof of fidelity coverage, all as further explained below. The annual report period included on the annual report form **is for one year only**.

The following information may assist you in completing the annual report form. If you to have questions after reading this information and the regulations, a copy of which may be obtained from this office upon request, and your attorney is unable to assist you, please call our offices at 609-984-7574, prior to submitting the annual report.

The number and date of registration should be inserted at the top left hand corner of the annual report form and the date the form was completed should be indicated in the upper right hand corner. On the development line provide the name of the community and on the sponsor line the name of the entity offering the units for sale.

These next items are numbered to correspond to the numbered item on the annual report form.

- 1) The date is the date the Declaration of Covenants and Restrictions, the Master Deed or other instrument creating a community was recorded (filed). You may modify the form as necessary.
- 2) The total number of units sold refers to the total number of units conveyed since the offering was registered. It is a **cumulative** figure and is not limited to the number conveyed during the annual reporting period.
- 3) Only applicable to an occupied conversion.
- 4) The number of units under contract refers to the cumulative total number of units **currently** under contract at the end of the annual reporting period, but not yet conveyed.

The full build out number refers to the **total number** of units to be conveyed in the entire offering, as disclosed in the Public Offering Statement. In a phased project, the full build out number would be the total number of units to be conveyed in **all of the phases**.

The units registered refers to the total number of units **currently** registered by the Agency. In a phased project, this would refer to the number of units in the registered phases. If other than residential units are being offered for sale, e.g. parking or commercial units, indicate the number of each type of unit being offered.

- 5) The date the project was sold out means the date that the last unit was conveyed at closing. Do not include this date, if the last unit was conveyed **after the end** of the annual reporting period.
- 6) The board member composition refers to the number of board members at the end of the annual reporting period and must be completed, **even if elections have not yet taken place**. In such case, indicate the appropriate number of sponsor appointed members and the owner elected number as zero. **Do no leave these items blank**. The timing of all elections is described in the By-Laws of the association. However, the regulations state that the first of these elections to elect at least 25% of the board must take place no later than 60 days after the conveyance of 25% of the units. If you are unable to hold an election due to poor turnout or unavailability of candidates, include **an explanation** as to why the election could not be held and the steps being taken to hold the election. A complete explanation of the election requirements may be found at N.J.A.C. 5:26-8.4.

Annual Report Information Sheet P. 2

- 7) Unit owners control association as of is the date that the election was held to turn over control of the board to the unit owners and is included in the annual report only if this election took place during the annual reporting period. It is not the date on which 75% of the units were conveyed. As indicated above, such election must be held in accordance with the procedures set forth in the By-Laws and no later than 60 days after the conveyance of 75% of the units.

Compliance with N.J.A.C. 5:26-8.4(e) refers to the immediate turnover of all relevant documents by the developer to the association and generally takes place at the time of the turnover election. Only indicate yes or no, **if all of these items have been transferred** to the unit owner controlled board.

- 8) Only amendments to the application for registration that have been registered during the annual reporting year need be attached, although the dates of **all** amendments should be noted. N.J.A.C. 5:26-3.3(a) and N.J.A.C. 5:26-4.5(a) require **all** changes in the information in the application and POS to be submitted to the Agency in amendment form. To assure that **all** unit owners and current and future contract purchasers have a current POS, they must receive copies of **all** of the POS amendments. Moreover, no changes may be made in the information in the application and POS unless an amendment is registered by the Agency. N.J.A.C. 5:26-3.3(b) and N.J.A.C. 5:26-4.5(b).
- 9) The annual report year is based on the registration date and not the calendar year, e.g. if the offering was registered on February 2, 2007, the annual report for 2010 would cover the period from February 2, 2009 to February 2, 2010.
- 10) The most recent promotional material may include copies of web pages, brochures, newspaper or magazine advertising. Prior to submission confirm that all advertising complies with N.J.A.C. 5:26-5.1 and N.J.A.C. 5:26-5.2.
- 11) In an age restricted project, for purposes of compliance with N.J.A.C. 5:26-3.1(a) 19, a copy of Verification of Compliance means an **original** affidavit certifying that the project is in compliance with the Federal Housing for Older Persons Act of 1995. This affidavit must make reference to the statute and may make reference to the relevant governing documents. Compliance is based on the **age of the occupants not the owners**. A copy of the form completed by the owners may be attached as well, but this alone is not satisfactory.
- 12) A copy of the current annual audit of association funds must be included with the annual report **whether or not the developer is in control of the board**. While the developer is in control it must have an audit prepared and delivered to the unit owners within 90 days of the end of the fiscal year as required by N.J.A.C. 5:26-8.7(c). **A Compilation or Review is not acceptable. It must be a Certified Audit**. A copy of this audit must also accompany the annual report, so that any deficit issues may be addressed. If the audit reflects a deficit or money owed by the developer and the developer has already made its payment at the time the audit is submitted, it should also submit proof of such payment.

If the developer is no longer in control, but is still offering units for sale, it is still entitled as a unit owner to a copy of any audit conducted by the unit owner controlled association. If the audit shows a deficit, although the developer is no longer responsible for payment of the deficit, it is required to amend the Public offering Statement to disclose to prospective purchasers the deficit and, if known, its cause and how it will be eliminated. If the audit reflects money owed by the developer and it has already made the payment at the time the audit is submitted, it should also submit proof of such payment. If the developer is unable to obtain a copy of the audit to include with the annual report, submit the annual report **with an explanation** as to why the audit is not included.

## Annual Report Information Sheet P. 3

If the annual report period ends within three months **prior to the end** of the next fiscal year, in addition submit the audit for the coming fiscal year when, and if, it is made available. For example, if an annual report was due in September of 2009, but the fiscal year end is December 31, submit not only the December 2008 audit, but also the December 2009 audit once it is available.

- 13) A copy of an updated fidelity bond or other association fund guarantee refers to the proof of bond or insurance coverage obtained by the developer while it is in control of the association. It is sometimes referred to as employee dishonesty or crime insurance. It is **not** a deposit bond. (See #14 below.) In order to comply with N.J.A.C. 5:26-8.7(d), the coverage must commence no later than the date of the first closing and it must continue at least until the date of unit owners in control of the board. (See #7 above.) In the first year of operation, the coverage must cover the operating budget. In the second year of thereafter it must be updated to assure coverage of the current year's operating budget plus reserves. The insured must be the association. If the management company or developer is the primary insured, proof must be provided, including any necessary endorsements, that the association is an additional insured.
- 14) A copy of the most current Escrow Agreement between the developer and the Escrow Agent must be submitted, along with a copy of the most current Certification of Escrow Agent. (A copy of the recommended form is available from our office.) The Escrow Agent must be an independent legal entity, e.g. an individual attorney or a law firm or a financial institution, unrelated to the developer. The Escrow Agent must certify that the deposit money will not be released to the developer, except as provided by the terms of the purchase agreements and the Escrow Agreement. If a deposit bond is posted by the developer, a copy of the current bond(s) must also be submitted. The Escrow Certification must ~~will~~ include a description of the bond and a statement that the bond is adequate to cover all deposit monies released by the Escrow Agent to the developer. The Escrow Agent could then release any and all deposit money up to the amount covered by the deposit bond. (See N.J.A.C. 5:26-6.4)

Since the above items are part of the Application for Registration (Tab 13) and the Public Offering Statement, (as exhibits included with the purchase contract), when any of the above items changes in any way, e.g. the identity or address of the Escrow Agent or the amount, addition or elimination of the bond, then an amendment must be submitted pursuant to N.J.A.C. 5:26-3.3(a) and N.J.A.C. 5:26-4.5(a).

An annual budget must be prepared and adopted by the association pursuant to N.J.A.C. 5:26-8.7(a) and must provide for all common expenses and adequate reserves. Whether or not the developer is still in control of the board of the association, a copy of the budget must be attached to the annual report. When the developer is in control of the board, the budget will be used to confirm compliance with N.J.A.C. 5:26-8.7(d).

Since the signature of the sponsor or its attorney must be **an original** signature on an original annual report form, do not fax or email the annual report.

The correct name and address of the President of the Association is especially important, when an Order Terminating Responsibility is requested. Any inaccuracies will result in unnecessary delays in processing the developer's request.

**FAILURE TO COMPLY WITH THE ANNUAL REPORT REGULATIONS MAY RESULT IN ADMINISTRATIVE ACTION**