

LEGISLATIVE HISTORY CHECKLIST

NJSA: 45:22A-21 to 45:22A-42 ("Planned Real Estate Development Full Disclosure Act.")

LAWS OF: 1977 CHAPTER: 419

BILL NO: S148

Sponsor(s): Fay

Date Introduced: Pre-filed

Committee: Assembly: State Government, Federal and Interstate Relations and Veterans' Affairs

Senate: SG, FIR & VA

Amended during passage: Yes Amendments during passage denoted by asterisks.

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Following statements are attached if available:

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Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

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Following were printed:

Reports: No

Hearings: No

Note: Citations to other state statutes could not be located.

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SENATE, No. 148

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Senator FAY

AN ACT to regulate and to require full and fair disclosure in the disposition of certain real estate developments, located within this State, and providing an appropriation therefor.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as *****[.]***** "The
2 Planned Real Estate Development Full Disclosure Act."

1 2. The Legislature in recognition of the increased popularity
2 of various forms of real estate development in which owners share
3 common facilities, units, parcels, lots, areas, or interests, and
4 taking notice of the underlying complexities of these new and
5 proliferating forms, deems it necessary in the interest of the
6 public health, safety, and welfare, and in the effort to provide
7 decent, safe and affordable housing, and to foster public under-
8 standing and trust, that dispositions in these developments be
9 regulated by the State pursuant to the provisions of this act.

1 3. As used in this act unless the context clearly indicates
2 otherwise:

3 a. "Disposition" means any sales, contract, lease, assignment,
4 ***[award by lottery,]*** or other transaction concerning a planned
5 real estate development ***[, if undertaken for gain or profit]***.

6 b. "Developer" or "subdivider" means any person who ***[,**
7 directly or indirectly, **]*** disposes ***[,]*** **or** offers to dispose ***[or**
8 advertises for disposition **]*** of any lot, parcel, unit, or interest in a
9 planned real estate development.

10 c. "Offer" means any inducement, solicitation, advertisement,
11 or attempt to encourage a person to acquire a unit, parcel, lot, or
12 interest in a planned real estate development.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

13 d. "Purchaser" or "owner" means any person or persons who
 14 acquires a legal or equitable interest in a unit, lot, or parcel in a
 15 planned real estate development, and shall be deemed to include
 16 a prospective purchaser or owner.

17 e. "State" means the State of New Jersey.

18 f. "Commissioner" means the Commissioner of Community
 19 Affairs.

20 g. "Person" ***[**means an individual, or any unincorporated
 21 organization, partnership, association, corporation, trust, or estate,
 22 or any two or more of the foregoing having a joint or common
 23 interest, in any other legal or commercial entity]* **shall be defined*
 23A *as in R. S. 1:1-2**.

24 h. "Planned real estate development" or "development" means
 25 any real property situated within the State, whether contiguous
 26 or not, which consists of or will consist of, separately owned areas,
 27 irrespective of form, be it lots, parcels, units, or interest, and
 28 which are offered or disposed of pursuant to a common promotional
 29 plan, and providing for common or shared elements or interests
 30 ***[**among, or restrictions upon purchasers, creating among all or
 31 any number of such purchasers a mutual reliance, dependence,
 32 responsibility or relationship]* **in real property**.

33 This definition shall specifically include, but shall not be limited
 34 to***,*** property subject to the "Condominium Act" (P. L. 1969,
 35 c. 257, C. 46:8B-1 et seq.), ***[**the "Municipal Planned Unit Develop-
 36 ment Act (1967)" (P. L. 1967, c. 61, C. 40:55-54 et seq.)]* **any*
 37 *form of homeowners' association, any housing cooperative** or to
 37A any community trust or other trust device.

38 This definition shall be construed liberally to effectuate the pur-
 39 poses of this act.

40 i. "Common promotional plan" means any offer for the dis-
 41 position of lots, parcels, units or interests of real property by a
 42 single person or group of persons acting in concert, where such
 43 lots, parcels, units or interests are contiguous, or are known,
 44 designated or advertised as a common entity or by a common name.

45 j. "Advertising" means and includes the publication or causing
 46 to be published of any information offering for disposition or for
 47 the purpose of causing or inducing any other person to purchase
 48 an interest in a planned real estate development, including the
 49 land sales contract to be used and any photographs or drawings
 50 or artist's representations of physical conditions or facilities on
 51 the property existing or to exist by means of any:

52 (1) Newspaper or periodical;

- 53 (2) Radio or television broadcast;
 54 (3) Written or printed or photographic matter;
 55 (4) Billboards or signs;
 56 (5) Display of model houses or units:
 57 (6) Material used in connection with the disposition or offer of
 58 the development by radio, television, telephone or any other elec-
 59 tronic means; or
 60 (7) Material used by developers or their agents to induce
 61 prospective purchasers to visit the development, particularly
 62 vacation certificates which require the holders of such certificates
 63 to attend or submit to a sales presentation by a developer or his
 64 agents.

65 "Advertising" does not mean and shall not be deemed to
 66 include: Stockholder communications such as annual reports and
 67 interim financial reports, proxy materials, registration statements,
 68 securities prospectuses, applications for listing securities on stock
 69 exchanges, and the like; all communications addressed to and
 70 relating to the account of any person who has previously executed
 71 a contract for the purchase of the subdivider's lands except when
 72 directed to the sale of additional lands.

73 k. "Nonbinding reservation agreement" means an agreement
 74 between the developer and a purchaser and which may be cancelled
 75 without penalty by either party upon written notice at any time
 76 prior to the formation of a contract for the disposition of any lot,
 77 parcel, unit or interest in a planned real estate development.

78 l. "Blanket encumbrance" means a trust deed, mortgage, judg-
 79 ment, or any other lien or encumbrance, including an option or
 80 contract to sell or a trust agreement, affecting a development or
 81 affecting more than one lot, unit, parcel, or interest therein, but
 82 does not include any lien or other encumbrance arising as the
 83 result of the imposition of any tax assessment by any public
 84 authority.

85 m. "Conversion" means any change with respect to a real estate
 86 development or subdivision, apartment complex or other entity
 87 concerned with the ownership, use or management of real property
 88 which would make such entity a planned real estate development.

1 4. This act shall be administered by the Division of Housing
 2 and Urban Renewal, of the State Department of Community
 3 Affairs, hereinafter referred to as the "agency." In the perform-
 4 ance of its legislatively mandated activities, the agency shall as
 5 necessary seek the advice and assistance of the Division of State
 6 and Regional Planning, of the Department of Community Affairs.

1 5. a. Unless the method of disposition is adopted for purposes
2 of evasion, the provision of this act shall not apply to offers or
3 dispositions:

4 (1) By an owner for his own account in a single or isolated
5 transaction;

6 (2) Wholly for industrial, commercial, or other nonresidential
7 purposes;

8 (3) Pursuant to court order;

9 (4) By the United States, by this State or any of its agencies
10 or political subdivisions:

11 (5) Of real property located without the State;

12 (6) Of cemetery lots or interests;

13 (7) Of less than ***[10]*** *****[50]***** *****100***** lots, parcels,
13A units or interests*; *provided***,*** however, that with respect to*
13B *condominiums and cooperatives, this exemption shall not apply,*
13C *irrespective of the number of lots, parcels, units, or interests offered*
13D *or disposed of***;****

13E **(8) Of developments ***[.]*** where the common elements or*
13F *interests, which would otherwise subject the offering to this act, are*
13G *limited to the provision of unimproved, unencumbered open space;*

13H *(9) In a development composed wholly of rental units, where the*
13I *relationship created is one of landlord and tenant.**

14 b. The agency may from time to time, pursuant to its rules and
15 regulations, exempt from any of the provisions of this act any
16 development, or any lots, units, parcels, or interests in a develop-
17 ment, if it finds that the enforcement of this act with respect to
18 such, is not necessary in the public interest or required for the
19 protection of purchasers by reason of the small amount of the
20 purchase price involved, the limited character of the offering, or
21 the limited nature of the common or shared elements ***[or restric-**
22 **tions upon purchasers]***.

1 6. a. Unless otherwise exempted:

2 (1) No developer may offer or dispose of any interest in a planned
3 real estate development, prior to the registration of such develop-
4 ment with the agency.

5 (2) No developer may dispose of any lot, parcel, unit, or interest
6 in a planned real estate development, unless he: delivers to the
7 purchaser a current public offering statement, on **or before** the
8 contract date of such disposition.

9 b. Any contract or agreement for the purchase of any parcel,
10 lot, unit, or interest in a planned real estate development may be
11 canceled without cause by the purchaser by sending or delivering
12 written notice of cancellation by midnight of the ***[fifteenth]***

13 *****["tenth"]***** **seventh***** calendar day following the day on
 14 which the purchaser has executed such contract or agreement.
 15 Every such contract or agreement shall contain, in writing, the
 16 following notice in 10-point bold type or larger, directly above the
 17 space provided for the signature of the purchaser:

18 "NOTICE TO THE PURCHASER: you have the right to
 19 cancel this contract **by sending or delivering written notice of*
 20 *cancellation to the developer** by midnight of the **["fifteenth"]**
 21 *****["tenth"]***** **seventh***** calendar day following the day
 22 on which it was executed. Such cancellation is without penalty,
 22A and any deposit made by you shall be promptly refunded in its
 22B entirety."

23 c. Notice as required in subsection b. shall, in addition to all
 24 other requirements, be conspicuously located and simply stated in
 25 the public offering statement.

26 d. The developer shall make copies of the public offering state-
 27 ment freely available to prospective purchasers prior to the con-
 28 tract date of disposition.

1 7. a. The application for registration of the development shall
 2 be filed as prescribed by the agency's rules and shall contain the
 3 following documents and information:

4 (1) An irrevocable appointment of the agency to receive service
 5 of any lawful process in any noncriminal proceeding arising under
 6 this act against the developer or his agents;

7 (2) The states or other jurisdictions, including the Federal
 8 Government, in which an application for registration or similar
 9 documents have been filed, and any adverse order, judgment or
 10 decree entered in connection with the development by the regulatory
 11 authorities in each jurisdiction or by any court;

12 (3) The name, address, and principal occupation for the past
 13 5 years of every officer of the applicant or person occupying a
 14 similar status, or performing similar **management** functions; the
 15 extent and nature of his interest in the applicant or the development
 16 as of a specified date within 30 days of the filing of the application;

17 (4) Copies of its articles of incorporation, with all amendments
 18 thereto, if the developer is a corporation; copies of all instruments
 19 by which the trust is created or declared, if the developer is a trust;
 20 copies of its articles of partnership or association and all other
 21 papers pertaining to its organization, if the developer is a partner-
 22 ship, unincorporated association, joint stock company, or any other
 23 form of organization; and if the purported holder of legal title
 24 is a person other than the developer, copies of the above documents
 25 from such person;

26 (5) A legal description of the lands offered for registration,
27 together with a map showing the subdivision proposed or made,
28 and the dimensions of the lots, parcels, units, or interests, **as avail-*
29 *able,** and the relation of such lands to existing streets, roads, and
30 other improvements;

31 (6) Copies of the deed or other instrument establishing title to
32 the subdivision in the developer, and a statement in a form ac-
33 ceptable to the agency of the condition of the title to the land
34 comprising the development, including encumbrances as of a
35 specified date within 30 days of the date of application by a title
36 opinion of a licensed attorney, or by other evidence of title ac-
37 ceptable to the agency;

38 (7) Copies of the instrument which will be delivered to a pur-
39 chaser to evidence his interest in the development, and of the
40 contracts and other agreements which a purchaser will be required
41 to agree to or sign;

42 (8) Copies of any management agreements, ***[employment]***
43 **service** contracts, or other contracts or agreements affecting the
44 use, maintenance or access of all or a part of the development;

45 (9) A statement of the zoning and other government regulations
46 affecting the use of the development including the site plans and
47 building permits and their status, and also of any existing tax and
48 existing or proposed special taxes or assessments which affect the
49 development: and a statement of the **existing** use of adjoining
49A lands;

50 (10) ***[Written assurances]*** **A statement** that the lots,
51 parcels, units or interests in the development will be offered to the
52 public, and that responses to applications will be made without
53 regard to marital status, sex, race, creed, or national origin;

54 (11) A statement of the present condition of access to the
55 development, the existence of any unusual conditions relating to
56 noise or safety, which affect the development and are known to
57 the developer, the availability of sewage disposal facilities and
58 other public utilities including water, electricity, gas, and telephone
59 facilities in the development to nearby municipalities, and the
60 nature of any improvements to be installed by the developer and
61 his estimated schedule for completion;

62 ***[(12) A statement by a licensed civil engineer that the offsite**
63 **and onsite measures, including the overall design of the entire**
64 **development, are adequate to prevent damage to property by**
65 **reason of flooding, erosion and other natural occurrences which are**
66 **usual or predictable for the area.]***

67 *[(13)]* *(12)* In the case of any conversion an engineering
 68 survey shall be required, which shall include mechanical, structural,
 69 electrical and engineering reports to disclose the *[(soundness)]*
 70 *condition* of the building ***[and]*** *[(the projected life of its
 70A components)]*;

71 *[(14)]* *(13)* In the case of any development or portion
 72 thereof against which there exists a blanket encumbrance, a state-
 73 ment of the consequences for an individual purchaser of a failure,
 74 by the person or persons bound, to fulfill obligations under the
 75 instrument or instruments creating such encumbrances and the
 76 steps, if any, taken to protect the purchaser in such eventuality;

77 *[(15)]* *(14)* A narrative description of the promotional
 78 plan for the disposition of the lots, parcels, units or interests in the
 79 development, together with copies of all advertising material which
 80 has been prepared for public distribution, and an indication of their
 81 means of communication;

82 *[(16)]* *(15)* The proposed public offering statement;

83 *[(17)]* *(16)* A current financial statement, which shall in-
 84 clude such information concerning the developer as the agency
 85 deems to be pertinent, including but not limited to, a profit and loss
 86 statement certified by an independent public accountant and in-
 87 formation concerning any adjudication of bankruptcy *during the*
 88 *last 5 years* against the developer, or any principal owning more
 89 than 10% of the interests in the development at the time of filing*,
 89A *provided***,*** however, that this shall not extend to limited*
 89B *partners, or others whose interests are solely ***[as that]****
 89C ****those*** of investors*;

90 *[(18)]* *(17)* Copies of instruments creating easements or
 91 other restrictions;

92 *[(19)]* *(18)* *[(Proof)]* *A statement of the status* of com-
 93 pliance with the requirements of all laws, ordinances, regulations,
 94 and other requirements of governmental agencies having jurisdic-
 95 tion over the premises;

95A *[(20)]* *(19)* Such other information, documentation, or
 96 certification as the agency deems necessary in furtherance of the
 97 protective purposes of this act.

98 b. The information contained in any application for registration
 99 and copies thereof, shall be made available to interested parties at
 100 a reasonable charge and under such regulations as the agency may
 101 prescribe.

102 c. A developer may register additional property pursuant to the
 103 same common promotional plan as those previously registered by

104 submitting another application, providing such additional informa-
 105 tion as may be necessary to register the additional lots, parcels,
 106 units or interests, which shall be known as a consolidated filing.

107 d. The developer shall immediately report any material changes
 108 in the information contained in an application for registration.
 109 **The term "material changes" shall be further defined by the*
 110 *agency in its regulations.**

111 e. The application shall be accompanied by a fee in an amount
 112 equal to \$10.00 per lot, parcel, unit, or interest contained in the
 113 application, which fees may be used by the agency to partially
 114 defray the cost of rendering services under the act.

1 8. a. A public offering statement shall disclose fully and accu-
 2 rately the characteristics of the development and the lots, parcels,
 3 units, or interests therein offered, and shall make known to pro-
 4 spective purchasers all unusual or material circumstances or
 5 features affecting the development. The proposed public offering
 6 statement submitted to the agency shall be in a form prescribed
 7 by its rules and regulations and shall include the following:

8 (1) The name and principal address of the developer;

9 (2) A general narrative description of the development stating
 10 the total number of lots, units, parcels, or interests in the offering,
 11 and the total number of such interests planned to be sold, leased
 12 or otherwise transferred;

13 (3) Copies of any management contract, lease of recreational
 14 areas, or similar contract or agreement affecting the use, main-
 15 tenance, or access of all or any part of the development, with a
 16 brief and simple narrative statement of the effect of each such
 17 agreement upon a purchaser, and a statement of the relationship,
 18 if any, between the developer and the managing agent or firm;

19 (4) The significant terms of any encumbrances, easements, liens,
 20 and restrictions, including zoning and other regulations, affecting
 21 such lands and each unit, lot, parcel, or interest, and a statement
 22 of all existing taxes and existing or proposed special taxes or
 23 assessments which affect such lands;

24 (5) (a) Relevant **community** information **[concerning im-*
 25 *provements]**, including hospitals, health and recreational
 26 facilities of any kind, streets, water supply, levees, drainage con-
 27 trol systems, irrigation systems, sewage disposal facilities and
 27A customary utilities; and

28 (b) The estimated cost***,*** **size* ****,*** date of comple-
 29 tion***,*** and responsibility for construction and maintenance of
 30 existing and proposed **[improvements]* *amenities** which are

31 referred to in connection with the offering or disposition of any
 32 interest in the subdivision or subdivided lands***[.]*** ***,***

33 (6) A copy of the proposed budget for the operation and main-
 34 tenance of the common or shared elements or interests;

35 (7) Additional information required by the agency to assure
 36 full and fair disclosure to prospective purchasers.

37 b. The public offering statement shall not be used for any pro-
 38 motional purposes before registration of the development and
 39 afterwards only if it is used in its entirety. No person may
 40 advertise or represent that the agency approves or recommends
 41 the development or dispositions therein. No portion of the public
 42 offering statement may be underscored, italicized, or printed in
 43 larger or heavier or different color type than the remainder of
 44 the statement, unless the agency requires or permits it.

45 c. The agency may require the developer to alter or amend the
 46 proposed public offering statement in order to assure full and
 47 fair disclosure to prospective purchasers, and no change in the
 48 substance of the promotional plan or plan of disposition or
 49 development of a planned real estate development may be made
 50 after registration without the approval of the agency. A public
 51 offering statement shall not be current unless all amendments
 52 have been incorporated.

53 d. The public offering statement shall, to the extent possible,
 54 combine simplicity and accuracy of information, in order to
 55 facilitate purchaser understanding of the totality of rights,
 56 privileges, obligations and restrictions, comprehended under the
 57 proposed plan of development. In reviewing such public offering
 58 statement, the agency shall pay close attention to the requirements
 59 of this subsection, and shall use its discretion to ***[reject]*** **re-*
 60 *quire revision of** a public offering statement which is unneces-
 61 sarily complex, confusing, or is illegible by reason of type size or
 61A otherwise.

1 9. Upon receipt of an application for registration in proper
 2 form, the agency shall forthwith initiate an investigation to de-
 3 termine that:

4 a. The developer can convey or cause to be conveyed the units
 5 offered for disposition if the purchaser complies with the terms
 6 of the offer;

7 b. There is reasonable assurance that all proposed improvements
 8 can be completed as represented;

9 c. The advertising material and the general promotional plan
 10 are not false or misleading and comply with the standards pre-
 11 scribed by the agency in its rules and afford full and fair disclosure;

12 d. The developer has not, or if a corporation, its officers and
13 principals have not, been convicted of a crime involving any
14 aspect of the real estate sales business in this State, United
15 States, or any other state or foreign country within the past 10
16 years; and that the developer has not been subject to any **perma-*
17 *nent** injunction or **final** administrative order restraining a false
18 or misleading promotional plan involving real property disposi-
19 tions the seriousness of which in the opinion of the agency warrants
20 the denial of registration; and

21 e. The public offering statement requirements of this act have
22 been satisfied.

1 10. a. Upon receipt of the application for registration in proper
2 form, and accompanied by proper fee, the agency shall, within
3 10 business days, issue a notice of filing to the applicant. Within
4 90 days from the date of the notice of filing, the agency shall
5 enter an order registering the development or rejecting the registra-
6 tion. If no order of rejection is entered within 90 days from the
7 date of notice of filing, the development shall be deemed registered
8 unless the applicant has consented in writing to a delay.

9 b. If the agency affirmatively determines **[*, upon inquiry and
10 examination, *]** that the requirements of section 9 of this act have
11 been met, it shall enter an order registering the development.

12 c. If the agency determines upon inquiry and examination that
13 any of the requirements of section 9 of this act have not been met,
14 the agency shall notify the applicant that the application for
15 registration must be corrected in such particulars, within 30 days,
16 as designated by the agency. If the requirements are not met
17 within the time allowed, the agency **[shall]** **may** enter an order
18 rejecting the registration which shall include the findings of fact
19 upon which the order is based. The order rejecting the registra-
20 tion shall not become effective until 20 days after the lapse of the
21 aforesaid specified period during which 20-day period the applicant
22 may petition for reconsideration and shall be entitled to a hearing.
23 Such order of rejection shall not take effect, in any event, until
24 such time as the hearing, once requested, has been given to the
25 applicant.

1 11. Within 30 days after each anniversary date of the order
2 registering the development, and while the developer retains any
3 interest therein, he shall file with the agency an annual report
4 reflecting any material changes in information contained in the
5 original application for registration, in a form designated by the
6 agency.

7 In the event that the agency determines that such annual report
 8 is no longer necessary for the protection of the public interest, or
 9 when the annual report reveals that the developer no longer retains
 10 any interest, and no longer has contractual, bonded or other
 11 obligations in the development, the agency shall issue an order
 12 terminating the ***[registration of the development]*** **responsi-*
 13 *bilities of the developer under this act*.*

1 12. a. The agency may:

2 (1) Accept registrations filed in **this State, in** other states or
 3 with the Federal Government;

4 (2) Contract with similar agencies in this State or other juris-
 5 dictions to perform investigative functions;

6 (3) Accept grants in aid from any governmental or other source;

7 (4) Cooperate with similar agencies in **this State or in** other
 8 jurisdictions to establish uniform filing procedures and forms,
 9 uniform public offering statements, advertising standards, rules
 10 and common administrative practices;

11 (5) Grant exemptions pursuant to its rules and regulations;

12 (6) Make necessary public or private investigations within or
 13 outside of this State to determine whether any person has violated
 14 or is about to violate this act or any rule or order hereunder, or
 15 to aid in the enforcement of this act or in the prescribing of rules
 16 and forms hereunder;

17 (7) Require or permit any person to file a statement in writing,
 18 under oath or otherwise, as the agency determines, as to all the
 19 facts and circumstances concerning the matter to be investigated;

20 (8) For the purpose of any investigation or proceeding under
 21 this act, the agency or any officer designated by rule, may administer
 22 oaths, or affirmations, and upon its own motion or upon request
 23 of any party may subpoena witnesses and compel their attendance,
 24 take evidence, and require the production of any matter which is
 25 relevant to the investigation, including the existence, description,
 26 nature, custody, condition, and location of any books, documents,
 27 or other tangible things and the identity and location of persons
 28 having knowledge or relevant facts or any other matter reasonably
 29 calculated to lead to the discovery of material evidence.

30 (9) Upon failure to obey a subpoena or to answer questions
 31 propounded by the investigating officer and upon reasonable notice
 32 to all persons affected thereby, the agency may apply to the
 33 Superior Court for an order compelling compliance.

1 13. a. If the agency determines after notice and hearing that
 2 a person has:

3 (1) Violated any provision of this act;

4 (2) Directly or through an agent or employee knowingly engaged
5 in any false, deceptive, or misleading advertising, promotional, or
6 sales methods to offer or dispose of a unit;

7 (3) Made any substantial change in the plan of disposition and
8 development of the subdivision subsequent to the order of registra-
9 tion without obtaining prior written approval from the agency;

10 (4) Disposed of any units, lots, parcels, or interests in a planned
11 real estate development which have not been registered with the
12 agency, or;

13 (5) Violated any lawful order or rule of the agency***[**, it
14 may]* *** **[:]***** ***;*** *it may** issue an order requiring the
15 person to cease and desist from the unlawful practice **[and]*** *or**
16 to take such *other** affirmative action as in the judgment of the
16A agency will carry out the purposes of this act.

17 b. If the agency makes a finding of fact in writing that the public
18 interest will be irreparably harmed by delay in issuing an order,
19 it may issue a temporary cease and desist order. **[Prior to issuing**
20 **the temporary cease and desist order, the agency, whenever**
21 **possible, by telephone or otherwise, shall give notice to the**
22 **developer or his agents of the proposal to issue a temporary**
23 **cease and desist order.]*** Every temporary cease and desist order
24 shall include in its terms a provision that upon request a hearing
25 shall be held within **[30]*** *10** days of such request to determine
26 whether or not it becomes permanent. *Such temporary cease and*
27 *desist order shall be forwarded by certified mail.**

1 14. a. A registration may be revoked after notice and hearing
2 upon a written finding of fact that the developer has:

3 (1) Failed to comply with the terms of a cease and desist order;

4 (2) Been convicted in any court subsequent to the filing of the
5 application for registration for a crime involving fraud, deception,
6 false pretenses, misrepresentation, false advertising, dishonest
7 dealing, or other like offense;

8 (3) Disposed of, concealed, or diverted any funds or assets of
9 any person so as to defeat the rights of purchasers;

10 (4) Failed faithfully to perform any stipulation or agreement
11 made with the agency as an inducement to grant any registration,
12 to reinstate any registration, or to approve any promotional plan
13 or public offering statement;

14 (5) Advertised his lands or responded to applications for his
15 lands in a manner which was discriminatory on the basis of marital
16 status, sex, race, creed, or national origin*****[, or]*****;

17 (6) Willfully violated any provision of this act or of a rule
18 adopted thereunder;

19 (7) Made intentional misrepresentation or concealed material
20 facts in an application for registration filed for registration.

21 b. Findings of fact, if set forth in statutory language, shall be
22 accompanied by a concise and explicit statement of the underlying
23 facts supporting the findings.

24 c. If the agency finds, after notice and hearing, that the developer
25 has been guilty of a violation for which revocation could be
26 ordered, it may in lieu thereof issue a cease and desist order.
27 **Revocation of registration may be utilized only as a remedy of*
28 *last resort.**

1 15. a. The agency shall adopt, amend, or repeal such rules and
2 regulations as are reasonably necessary for the enforcement of
3 the provisions of this act in accordance with the provisions of
4 the Administrative Procedure Act, P. L. 1968, c. 410 (C. 52:14B-1
5 et seq.). The rules may provide for, but are not limited to:
6 provisions for advertising standards to insure full and fair dis-
7 closure; **disclosure** provisions relating to conversions; pro-
8 visions relating to nonbinding reservation agreements; provisions
9 for adequate bonding or access to some escrow or trust fund **not*
10 *otherwise required by the municipal governing body** to be located
11 within this State, so as to insure compliance with the provisions of
11A this act, and to compensate purchasers for failure of the registrant
12 to perform in accordance with the terms of any contract or public
13 statement; provisions that require a registrant to deposit pur-
14 chaser down payments, security deposits or other funds in an
15 escrow account, or with an attorney licensed to practice law in
16 this State, until such time as the agency by its rules and regulations
17 deems it appropriate to permit such funds to be released; pro-
18 visions to insure that all contracts between developer and purchaser
19 are fair and reasonable; provisions that the developer must give
20 a fair and reasonable warranty on construction of any improve-
21 ments; provisions that the budget for the operation and main-
22 tenance of the common or shared elements or interests shall provide
23 for adequate reserves for depreciation and replacement of the
24 improvements; provisions for operating procedures; and such other
25 rules and regulations as are necessary and proper to effectuate
26 the purposes of this act, and taking into account and providing
27 for, the broad range of development plans and devises, manage-
28 ment mechanisms, and methods of ownership, permitted under the
29 provisions of this act.

30 b. If it appears that a person has engaged, or is about to
31 engage, in an act or practice constituting a violation of a provision
32 of this act, or a rule or order hereunder, the agency, with or without
33 prior administrative proceedings, may bring an action in the
34 Superior Court to enjoin the acts or practices and to enforce com-
35 pliance with this act or any rule or order hereunder. Upon proper
36 showing, injunctive relief or temporary restraining orders shall
37 be granted, and a receiver may be appointed. The agency shall not
38 be required to post a bond in any court proceeding.

39 c. The agency may intervene in a suit involving any planned
40 real estate development. In any such suit, by or against the
41 developer, the developer shall promptly furnish the agency with
42 notice of the suit and copies of all pleadings.

1 16. a. For purposes of this act, an application for registration
2 submitted to the agency shall be deemed a submission by the ap-
3 plicant to the jurisdiction of the New Jersey courts.

4 b. In addition to the methods of service of process provided for
5 in the rules governing the New Jersey courts, service may be made
6 by delivering a copy of the process to the office of the agency, but
7 such service shall not be effective unless the plaintiff, which may
8 be the agency in a proceeding instituted by it:

9 (1) Forthwith sends a copy of the process and of the pleading
10 by certified mail to the defendant or respondent at his last known
11 address, and

12 (2) The plaintiff's affidavit of compliance with this section is
13 filed in the case on or before the return day of the process, or
14 within such further time as the court allows.

15 c. If any person, including any nonresident of this State,
16 *****[engaged]*** *engages****** in conduct prohibited by this act
16A or any rule or order hereunder, and *****[has not filed]*****
17 *****does not file***** a consent to the service of process, and personal
18 jurisdiction over him cannot otherwise be obtained in this
19 State, that conduct authorizes the agency to receive service of
20 process in any noncriminal proceeding against him or his successor
21 which grows out of that conduct and which is brought under this
22 act or any rule or order hereunder, with the same force and
23 validity as if served on him personally. Notice shall be given as
24 provided in subsection b.

1 17. a. Any developer disposing of real property subject to this
2 act, who shall violate any of the provisions of section 6 hereof,
3 or who in disposing of such property makes an untrue statement of
4 material fact or omits a material fact from any application for
5 registration, or amendment thereto, or from any public offering

6 statement, or who makes a misleading statement with regard to such
 7 disposition, shall be liable to the purchaser for ***[actual]* *double***
 8 damages suffered, and court costs expended, including reasonable
 9 attorney's fees, unless in the case of an untruth, omission, or mis-
 10 leading statement such developer sustains the burden of proving
 11 that the purchaser knew of the untruth, omission or misleading
 12 statement, or that he did not rely on such information, or that the
 13 developer did not know and in the exercise of reasonable care could
 14 not have known of the untruth, omission, or misleading statement.

15 ***[b. In addition to any other remedies and at the discretion of the**
 16 **court, the purchaser, under the preceding subsection, may recover**
 17 **the consideration paid for the lot, parcel, unit, or interest in the**
 18 **development together with interest at the rate of 6% per**
 19 **year from the date of payment, property taxes paid, costs, and**
 20 **reasonable attorneys fees less the amount of any income received**
 21 **from such lands upon tender of appropriate instruments of recon-**
 22 **veyance. If the purchaser no longer owns the lot, parcel, unit or**
 23 **interest in the development, he may recover the amount that would**
 24 **be recoverable upon a tender of a reconveyance less the market**
 25 **value of the land or property when disposed of and less interest at**
 26 **the rate of 6% per year on that amount from the date of**
 27 **disposition.]***

27A **b. The court may, in addition to remedies provided herein,*
 27B *frame such other relief as may be appropriate under the circum-*
 27C *stances. If the purchaser shall fail in establishing a cause of action,*
 27D *and the court further determines that the action was wholly with-*
 27E *out merit, the court may award attorney's fees to the developer.**

28 c. Every person who directly or indirectly controls a develop-
 29 ment or developer liable under subsection a., every general partner,
 30 officer, or director of a developer, and every person occupying a
 31 similar status or performing a similar function, shall also be liable
 32 jointly and severally with and to the same extent as such developer,
 33 unless the person otherwise liable sustains the burden of proof
 34 that he did not know and in the exercise of reasonable care could
 35 not have known of the existence of the facts by reason of which the
 36 liability is alleged to exist. There is a right to contribution as in
 37 cases of contract among persons so liable.

38 ***[d. Every person whose occupation gives authority to a state-**
 39 **ment which, with his consent, has been used in an application for**
 40 **registration or public offering statement, if he is not otherwise asso-**
 41 **ciated with the developer and development plan in a material way,**
 42 **shall be liable only for false statements and omissions in his state-**
 43 **ment and only if he fails to prove that he did not know and in the**

44 exercise of the reasonable care of a man in his occupation could
 45 not have known of the existence of the facts by reason of which the
 46 liability is alleged to exist.

47 e. A tender or reconveyance may be made at any time before the
 48 entry of judgment.]*

49 ***[f.]*** *d.* A person may not recover under this section in
 50 actions commenced more than 6 years after his first payment of
 51 money to the developer in the contested transaction.

52 ***[g.]*** *e.* Any stipulation or provision purporting to bind any
 53 purchaser acquiring a parcel, lot, unit, or interest, in any develop-
 54 ment subject to the provisions of this act, or any rule, regulation,
 55 or order promulgated thereunder, to a waiver of compliance with
 56 said provisions, shall be void.

1 18. a. Any person who violates any provision of this act or of a
 2 rule adopted under it or any person who in an application for
 3 registration filed for registration makes any untrue statement of a
 4 material fact or omits to state a material fact shall be fined not less
 5 than ***[\$500.00]*** *\$250.00*, nor more than \$50,000.00 per violation.
 6 ***[Any real estate broker or salesman who violates any of the pro-**
 7 **visions of this act shall, in addition to the penalties set forth herein,**
 8 **be subject to the penalties as set forth in R. S. 45:15-17.]***

9 b. The commissioner, through the agency, may levy and collect
 10 the penalties set forth in subsection a. hereof after affording the
 11 person alleged to be in violation of this act an opportunity to
 12 appear before the commissioner or his designee and to be heard
 13 personally or through counsel on the alleged violations and a find-
 14 ing by the commissioner that said person is guilty of the violation.
 15 When a penalty so levied by the commissioner has not been satisfied
 16 within 30 days of the levy, the penalty may be sued for and recovered
 17 by and in the name of the commissioner in a summary proceeding
 18 pursuant to the Penalty Enforcement Law (N. J. S. 2A:58-1
 19 et seq.).

20 c. The agency may in the interest of justice compromise any civil
 21 penalty, if in its determination the gravity of the offense or offenses
 22 does not warrant the assessment of the full fine.

1 19. The provisions of this act shall apply to lands situated in this
 2 State whether promoted or advertised within or without the State.

1 20. If any provision of this act or the application thereof to any
 2 person or circumstances is held invalid, the invalidity shall not
 3 affect other provisions or applications of the act which can be given
 4 effect without the invalid provisions or applications, and to this end
 5 the provisions of this act are severable.

1 ***[21.** To the extent that this act shall or may overlap or create
 2 dual jurisdiction with the "Retirement Community Full Disclosure
 3 Act," P. L. 1969, c. 215 (C. 45:22A-1 et seq.), the provisions of this
 4 act including all powers, duties, full disclosure requirements, regis-
 5 tration requirements, fees, and penalties, shall apply, and any
 6 development falling within the jurisdiction of both said acts shall
 7 be deemed for all purposes to be subject to the provisions of this
 8 act alone.]**

1 *21. Any retirement subdivision or community as defined in the
 2 Retirement Community Full Disclosure Act, P. L. 1969, c. 215
 3 (C. 45:22A-1 et seq.) shall***,*** after the effective date of this
 4 act***,*** be deemed for all purposes to be subject to the ***[pro-
 5 vision]*** ***provisions*** of this act alone, provided, however,
 6 that any portion or section of such retirement community or sub-
 7 division registered with the Division of Housing and Urban
 8 Renewal prior to the effective date of this act shall remain under
 9 the jurisdiction of the Retirement Community Full Disclosure Act.

1 22. This act shall not apply to any portion of a planned real
 2 estate development which has on the effective date of this act:

- 3 a. Its building permit or permits; or
- 4 b. Final municipal approval of (1) its site plan or (2), in the
 5 case of single or two-family homes or separate lots, its subdivision
 6 plat; provided that the land is not valued, assessed and taxed as an
 7 agricultural or horticultural use pursuant to the "Farmland
 8 Assessment Act of 1964", P. L. 1964, c. 48 (C. 54:4-23.1 et seq.);
 9 provided further that this section shall not be construed as apply-
 10 ing to conversions or Retirement Subdivisions or Communities as
 11 defined in the Retirement Community Full Disclosure Act, P. L.
 12 1969, c. 215 (C. 45:22A-1 et seq.).*

1 ***[22.]*** *23.* For the purpose of administering the provisions
 2 of this act, there is appropriated to the Department of Community
 3 Affairs, Division of Housing and Urban Renewal, the sum of
 4 **[\$125,000.00]*** **\$76,000.00**.

1 ***[23.** This act shall take effect 180 days after enactment but the
 2 commissioner and the agency may take any action and promulgate
 3 any rules or regulations necessary for the full implementation
 4 hereof on said effective date.]**

1 *24. This act shall take effect 270 days after enactment***,*** but
 2 the commissioner and the agency shall take any action and promul-
 3 gate any rules or regulations necessary for the full implementation
 4 hereof on said effective date.*

ASSEMBLY STATE GOVERNMENT, FEDERAL AND
INTERSTATE RELATIONS AND VETERANS
AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 148

[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: NOVEMBER 21, 1977

The statement of the Senate State Government Committee fully and adequately explains the provisions of this bill, as amended by that committee.

The Assembly committee made a number of technical changes and two substantive changes. (1) The committee exempted from the provisions of this act planned real estate developments of fewer than 100 lots or units. In the bill received from the Senate, the exemption had applied to developments which had fewer than 50 lots or units. This change does not, however, affect the provision that requires *all* condominiums and cooperatives, no matter how few the lots or units, to comply with this act. (2) The committee reduced the 10-day "cooling-off" period to 7 days, thus making this bill consistent with the "Land Sales Full Disclosure Act." During the "cooling-off" period, a prospective purchaser can cancel by written notice a contract or purchase agreement without cause.

SENATE STATE GOVERNMENT, FEDERAL AND
INTERSTATE RELATIONS AND VETERANS
AFFAIRS COMMITTEE

STATEMENT TO
SENATE, No. 148
with Senate committee amendments

STATE OF NEW JERSEY

DATED: MARCH 22, 1976

This bill, sponsored by Senator Fay, is designed to be a companion measure to P. L. 1975, c. 235 (C. 45:15-16.3 et seq.) the "Land Sales Full Disclosure Act." The "Land Sales Full Disclosure Act" regulates the sale of land through promotional plans *outside* the State of New Jersey. The bill presently under consideration would regulate disclosure in the disposition of real estate *within* the State of New Jersey.

If the bill becomes law, its provisions will be administered by the Division of Housing in the Department of Community Affairs. The bill is being reported with extensive amendments which have been approved by the sponsor. These amendments are the product of joint work by the committee, the legislative representatives of the business affected by the bill and the representatives of the Department of Community Affairs.

Section 2 is the definitions section of Senate Bill No. 148 and it is important to note that this section makes the provisions of the act inclusive of, but not limited to, the property subject to the "Condominium Act" (P. L. 1969, c. 257, C. 46:8B-1 et seq.). Senate Bill No. 148 is a *regulatory* act and is affirmative in its approach. It provides the State with a mechanism for positive action with respect to regulating, investigating and monitoring "planned real estate developments." The "Condominium Act," on the other hand, is a "structural act" in the sense that it sets forth guidelines for the creation of condominiums.

States which have similar planned development full disclosure laws are Alaska, Arizona, Connecticut, Florida, Hawaii, Maryland, Michigan, New York, Pennsylvania, and Virginia. Ten other states also regulate condominium developments through other mechanisms.

Senate Bill No. 148, if enacted, would regulate any real property situated within the State which is "offered or disposed of pursuant to a common promotional plan," and which provides for common or shared elements or interests in real property.

The bill provides for a "cooling-off" period wherein a prospective purchaser can cancel by written notice a contract or purchase agreement without cause within a certain period of time. Originally, the bill specified a 15-day "cooling-off" period but it has now been amended to 10 days. This makes it more consistent with the "Land Sales Full Disclosure Act" which has a 7-day "cooling-off" period.

The bill provides for a detailed application for registration of a development and specifies what must be included therein. It also specifies what must be disclosed in a public offering statement. It requires the regulating agency to initiate an investigation to determine if the developer is capable of doing what his promotional and advertising material says he can do.

The legislation prescribes time limits for the agency to notify the developer of its actions and also requires an annual report by the developer reflecting any "material changes" in information. The agency is empowered to issue cease and desist orders. The bill sets forth the grounds for revocation of registration but was amended to provide that, "Revocation of registration may be utilized only as a remedy of last resort."

The bill provides for recovery of damages and penalties. The recovery of damages section was amended so that rather than a detailed rescission formula as specified in the original language, a purchaser who brings a successful action would be awarded double damages. It also provides that the developer may be awarded attorney's fees if the purchasers suit is determined by the court to be "wholly without merit."

The bill has also been amended so that planned real estate developments that already have building permits on the effective date of the act, or have final municipal approval for its site plan or subdivision plat, are excluded from the jurisdiction of the act. The act was also amended so that its effective date, originally 180 days after enactment, is now 270 days after enactment.

The bill appropriates \$125,000.00 for the purposes of administering the provisions of the act. It is estimated that, in the future, the enforcement program may be self-supporting because of the registration fee which is \$10.00 per unit.