

308C.612 SENIOR HOUSING COOPERATIVE OFFERING DOCUMENTS; GENERAL PROVISIONS.

Subdivision 1. **Generally.** The senior housing cooperative organized under this chapter shall provide to each subscriber for a membership in the cooperative: (1) an occupancy agreement or proprietary lease; (2) the articles; (3) the bylaws; (4) an annualized budget for the current fiscal period; and (5)(i) for the initial purchase of a membership interest to which a particular dwelling unit is appurtenant, an information bulletin and a subscription agreement; and (ii) for any purchase of a membership interest after its initial purchase, a resale disclosure statement and a membership purchase and sale agreement, all of which shall minimally include the contents of the provisions set forth in subdivisions 2 to 6, as applicable.

Subd. 2. **Information bulletin.** (a) With respect to an initial sale of a cooperative's authorized membership interests to older persons, each subscriber for membership shall be given an information bulletin that shall fully and accurately disclose:

- (1) the name and principal address of the cooperative;
- (2) the number of dwelling units in the project;
- (3) a general description of the project, including, at a minimum:
 - (i) the number of buildings;
 - (ii) the number of dwellings per building;
 - (iii) the type of construction;
 - (iv) whether the project involves new construction or rehabilitation;
 - (v) whether any building was wholly or partially occupied, for any purpose, before it was added to the project and the nature of the occupancy;
 - (vi) a general description of any roads, trails, or utilities that are located on the common elements and that the cooperative is required to maintain;
 - (vii) the name of the developer, the developer's credentials, and the credentials of the persons constituting the initial board of directors of the cooperative; and
 - (viii) a statement that the developer shall be financially liable for all of the common expenses and costs allocated to the unsold membership interests and dwelling units appurtenant thereto until such membership interests are sold to the initial purchasers thereof;
- (4) the cooperative's schedule of commencement and completion of construction of any buildings and other improvements that the cooperative is obligated to build;
- (5) any expenses or services not reflected in the budget that the cooperative pays or provides that may become a common expense and the projected common expense attributable to each of those expenses or services;
- (6) identification of any liens, defects, or encumbrances that will continue to affect the title to a dwelling unit or to any real property owned by the cooperative after the contemplated conveyance;
- (7) a statement disclosing to the extent of the cooperative's or an affiliate of a cooperative's actual knowledge, after reasonable inquiry, any unsatisfied judgments or lawsuits to which the cooperative is a

party, and the status of those lawsuits which are material to the project or the dwelling unit appurtenant to a membership being purchased;

(8) a summary of the insurance coverage provided by the cooperative for the benefit of members, and a detailed description of the insurance coverage that members are encouraged to purchase for their own benefit;

(9) a statement describing:

(i) whether the members are entitled for federal and state tax purposes to deduct payments made by the cooperative for real estate taxes and interest paid to the holder of a security interest encumbering the cooperative;

(ii) a statement as to the effect on the members if the cooperative fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative; and

(iii) the principal amount and a general description of the terms of any blanket mortgage contract for deed, or other blanket security instrument encumbering the cooperative property;

(10) a statement:

(i) that real estate taxes for the dwelling unit or any real property owned by the cooperative are not delinquent, or if there are delinquent real estate taxes, describing the property for which the taxes are delinquent, stating the amount of the delinquent taxes, interest, and penalties, and stating the years for which taxes are delinquent; and

(ii) setting forth the amount of real estate taxes expected to be allocated to the dwelling units, including the amount of any special assessments certified for payment with the real estate taxes, due and payable with respect to the dwelling unit in the year in which the information bulletin is given;

(11) any recorded covenants, conditions restrictions, and reservations affecting the project; a statement that the occupancy agreement must be signed at the closing; and a statement that members are required to abide by the bylaws, the articles of incorporation, and the rules, regulations, and policies of the cooperative, including amendments from time to time;

(12) a brief narrative description of any material agreements entered into between the cooperative and a governmental entity that affect the project;

(13) a budget prepared by the developer; and

(14) a statement that purchase and sales of memberships and rights under occupancy agreements are not for speculative purposes and that investments in the cooperative by members are for the sole purpose of securing and acquiring a dwelling unit for their residential use and benefit.

(b) A cooperative shall promptly amend the information bulletin to reflect any material change in the information required by this chapter.

Subd. 3. Resale disclosure certificate. (a) In the event of a resale of a membership interest by either the departing member or by the cooperative, the departing member or the cooperative, as applicable, shall furnish to the purchaser before the execution of any purchase and sale agreement for the applicable membership interest the following documents relating to the cooperative:

(1) copies of the articles and bylaws, any rules and regulations, and any amendments thereto; and

(2) a resale disclosure certificate containing the information set forth in paragraph (b).

(b) The resale disclosure certificate must provide the following information:

(1) the name of the cooperative;

(2) the number of the dwelling unit appurtenant to the subject membership interest;

(3) the amount of the monthly common expense assessments payable under the occupancy agreement applicable to the subject dwelling unit;

(4) the amount of other additional fees or charges payable by members, such as late payment charges;

(5) extraordinary expenditures, if any, approved by the cooperative and not yet assessed to members for the current and two succeeding fiscal years;

(6) the current balances in the cooperative's replacement reserve and the general operating reserve, and any other reserves maintained by the cooperative;

(7) copies of the most current financial statements of the cooperative, including balance sheet and income and expense statements;

(8) a disclosure of any unsatisfied judgments against the cooperative;

(9) a statement that there are no pending lawsuits to which the cooperative is a party except as specifically disclosed;

(10) a radon disclosure pursuant to the requirements of section 144.496; and

(11) the resale disclosure certificate shall contain a certification by the subscribing party that the information contained therein is true and correct as of the date of the certification.

Subd. 4. Subscription agreement for new project. The subscription agreement must include the following provisions:

(1) a statement that all subscription funds received from applicants shall be deposited promptly without deduction in an escrow account at a bank or banks whose deposits are insured by an agency of the federal government. The escrow account shall be controlled by a licensed title insurance company or agent thereof. Money in the account shall be held solely for the benefit of the subscribers until transferred to the account of the cooperative as provided in clauses (2) and (5). The escrow account may be interest bearing, in which event interest earnings shall accrue to the benefit of subscribers, except that subscription funds and interest earned, if any, may be used solely to pay the escrow agent to administer the escrow account and to pay costs and expenses associated with the offering;

(2) a statement of any subscription funds due and payable upon execution of the subscription agreement and, where less than all of the subscription funds are due and payable upon execution of the subscription agreement, a statement of the balance due and payable and the estimated time frame within which that balance must be paid;

(3) a statement of the estimated monthly carrying charges with respect to the membership interest being subscribed for;

(4) a statement that refundable subscription funds shall be immediately refunded by the escrow agent to an applicant whose subscription agreement is terminated pursuant to the agreement and a statement whether the return of subscription funds shall be with or without accrued interest earned on the escrow;

(5) a statement concerning the deadline when sufficient subscribers and loan commitments must be obtained, and a statement that if the deadline is not attained, the subscribers' escrowed funds will be released;

(6) a statement that the entire escrow account and accrued interest earned, if any, shall be immediately paid to the cooperative if sufficient subscribers and loan commitments are obtained by the disclosed end date and the cooperative proceeds with the project;

(7) a statement that:

(i) within ten days after the receipt of an information bulletin, a purchaser may cancel the subscription agreement for the purchase of a membership in a cooperative, provided that the right to cancel terminates upon the purchaser's voluntary acceptance of a conveyance of the membership interest from the cooperative or by the purchaser agreeing to modify or waive the right to cancel by a separate writing from the subscription agreement and signed by the purchaser more than three days after the purchaser receives the information bulletin; and

(ii) if a purchaser receives an information bulletin more than ten days before signing a subscription agreement, the purchaser cannot cancel the subscription agreement pursuant to this ten-day cancellation.

Subd. 5. Membership purchase and sale agreements. In the event of a resale of a membership interest by either the departing member or by the cooperative, a membership purchase and sale agreement shall be utilized as the contract for purchase of the membership interest rather than a subscription agreement. A membership purchase and sale agreement must contain the following provisions:

(1) a statement disclosing the identities of the selling and purchasing parties;

(2) a statement acknowledging that the purchase of a membership interest in the cooperative constitutes personal property and not an interest in real estate;

(3) a statement of the purchase price for the membership interest, including any earnest money due and payable, the date on which the membership interest is due and payable, and any sum which may be due and payable upon closing;

(4) a schedule of any items of personal property owned by the seller that the buyer is purchasing as part of the membership interest;

(5) a statement acknowledging that the seller and the cooperative have furnished the buyer with copies of the cooperative's articles of incorporation, bylaws, rules, and policies currently in effect and a resale disclosure statement;

(6) a statement that:

(i) within ten days after the receipt of a copy of the documents set forth in clause (5), a purchaser may cancel the purchase agreement for the purchase of a membership in a cooperative, without penalty and with a full and prompt refund of all payments made under the purchase agreement, unless within that ten-day period the buyer has closed on the purchase of the membership interest; and

(ii) if the buyer elects to cancel the purchase agreement pursuant to this provision, the buyer may do so in writing by hand delivering the notice of cancellation to the seller or seller's agent, or by mailing such notice by postage prepaid United States mail, to the seller or the seller's agent within the ten-day period;

(7) a statement outlining any contingencies or conditions precedent to closing on the purchase of the membership interest and the impact of a failure of one or more of the articulated contingencies on the refund of any earnest money to the buyer;

(8) a statement of the monthly carrying charges allocable to the dwelling unit appurtenant to the membership interest being purchased and any adjustments or prorations of carrying charges due and payable in the month of closing as between the seller and buyer;

(9) a statement of any dwelling alterations that will be permitted prior to closing, the conditions under which those alterations may be made, and the parties financially responsible for any such alterations;

(10) a statement of the anticipated closing date for the purchase of the membership interest;

(11) a statement of the remedies available to the seller or buyer as a result of a default by the other party in its obligation to close on the purchase of the subject membership interest;

(12) a schedule of the items to be delivered at closing which shall include:

(i) the seller's delivery of seller's membership certificate to the buyer, duly assigned to the buyer;

(ii) the seller's delivery to the buyer of a bill of sale in a form reasonably acceptable to the buyer, conveying to the buyer free and clear of all encumbrances any personal property purchased by the buyer pursuant to clause (4);

(iii) the buyer's delivery to the seller of funds representing any balance of the purchase price due and payable; and

(iv) the buyer's delivery to the cooperative of an occupancy agreement duly executed by the buyer; and

(13) a statement regarding the impact of destruction of the subject dwelling unit prior to the closing date on the buyer's purchase obligations and refund of any earnest money paid.

Subd. 6. Occupancy agreement contents. The occupancy agreement must include the following provisions:

(1) a statement of the monthly carrying charges due and payable by the member to the cooperative representing the member's proportionate share of the sum that the cooperative's board of directors' estimates are required to meet the cooperative's annual expenses, and the method of calculating the same;

(2) a statement of when the payment of carrying charges will commence;

(3) a statement of the circumstances under which the cooperative may issue any patronage refunds or credits to members;

(4) a statement that the term of the occupancy agreement is coextensive with membership in the cooperative, a statement regarding any automatic renewal of the occupancy agreement term, and a statement of any other terms, conditions, or requirements for renewal of the occupancy agreement term;

(5) a statement of the terms under which the member or cooperative may terminate a member's occupancy agreement;

(6) a statement that the member may occupy the member's dwelling unit solely as a private residential dwelling unit;

(7) a statement outlining the member's rights, duties, and obligations under the occupancy agreement and as a member of the cooperative;

(8) a statement outlining member acts prohibited by the occupancy agreement, articles, bylaws, or the rules, regulations, and policies of the cooperative;

(9) a statement regarding the circumstances under which assignment of the occupancy agreement or subletting is to be permitted or prohibited;

(10) a statement outlining the circumstances and manner in which a membership interest can be transferred, assigned, or sold;

(11) a statement outlining the manner in which the cooperative will manage the cooperative property and operate and administer the cooperative's business, including the payment of all taxes and assessments levied against the cooperative to the extent not billed by the taxing authority directly to the member;

(12) a statement outlining the separate insurance obligations of the cooperative and the member, and should minimally include the separate insurance requirements set forth in this chapter;

(13) a statement concerning the circumstances and extent to which the cooperative must repair, maintain, and replace property owned by the cooperative and the circumstances, if any, under which the cooperative may hold the member responsible for repairing, maintaining, or replacing property owned by the cooperative;

(14) a statement defining events of default under the occupancy agreement, the effects of default, and the remedies available to the cooperative;

(15) a statement through which the member covenants that the member and the member's guests and subtenants, if any, must preserve and promote the cooperative ownership principles of the cooperative and abide by the cooperative's articles, bylaws, and rules, policies and regulations;

(16) a statement that representatives of any mortgagee holding a mortgage on the property of the cooperative, the officers and employees of the cooperative, and, with the approval of the cooperative, the employees of any contractor, utility company, municipal agency, or others, has the right to enter the member's dwelling unit and make inspections at any reasonable hour of the day with reasonable notice and at any time in the event of emergency; and

(17) a statement that the cooperative will not discriminate against any person because of race, color, religion, sex, handicap, or national origin.

History: 2024 c 96 art 1 s 55